(33,773, 33,774)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

No. 464

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE, APPELLANT,

vs.

HAROLD E. WEST, CHAIRMAN, AND J. FRANK HARPER AND STEUART PURCELL, MEMBERS, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND.

No. 465

HAROLD E. WEST, CHAIRMAN, AND J. FRANK HARPER AND STEUART PURCELL, MEMBERS, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND, APPELLANTS,

vs.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE.

APPEALS FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND

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VOLUME I

TRANSCRIPT OF RECORD

FROM THE

CIRCUIT COURT NO. 2 OF BALTIMORE CITY

IN THE CASE OF

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

VS.

HAROLD E. WEST ET AL.,

TO THE

COURT OF APPEALS OF MARYLAND.

THOMAS J. TINGLEY,
RAYMOND S. WILLIAMS,
For Appellants.

HENRY H. WATERS,
VENABLE, BAETJER & HOWARD,
HAMAN, COOK, CHESNUT & MARKELL,
JOS. C. FRANCE,
For Appellee.

DOCKET ENTRIES.

Henry H. Waters
Venable, Baetjer and Howard
Haman, Cook, Chesnut & Markell
Jos. C. France

The United Railways and Electric Company of Baltimore.

No. 16060 A.

Thomas J. Tingley
Raymond S. Williams
and
Carville D. Benson
James K. Cullen

Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, Members, Constituting The Public Service Commission of Maryland.

---

13 March, 1928—Bill of Complaint and to have the orders decreed null and void and set aside and for an Injunction, etc., (1) and plaintiff's Exhibit A (2) fd.

13 March, 1928—Subpoena Issued [(3) Summoned as marked].

13 March, 1928—Order of Court thereon directing defendants to show cause within twenty days after service of a copy of this order and Bill of Complaint (4) fd. Copy Issued [Served on defendants].

30 March, 1928—App. of Defendants by Thomas J. Tingley, Raymond S. Williams, Carville D. Benson and James K. Cullen and its Answer to Bill of Complaint (5) fd.

25 April, 1928—Plaintiff's Exhibits Vol. 1 (6), Vol. 2 (7), Vol. 3 (8), Vol. 4 (9), Vol. 5 (10), Vol. 6 (11), Vol. 7 (12) and Vol. 8 (13) fd.

10 May, 1928—Opinion (14) fd.

11 May, 1928—Decree, defendant to pay costs (15) fd.

11 May, 1928—Appeal prayed to the Court of Appeals of Maryland from decree of this Court dated 11th May, 1928 (16) fd.

22 May, 1928—Stipulation of Counsel as to record in Appeal (17) fd.

23 May, 1928—Order for Cross-Appeal on Halethorpe (18) fd.

(1)

BILL OF COMPLAINT.

(Filed March 13, 1928.)

In the Circuit Court No. 2 of Baltimore City.

The United Railways and Electric Company of Baltimore

vs.

Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, Members, Constituting the Public Service Commission of Maryland.

To the Honorable, the Judge of said Court:

The United Railways and Electric Company of Baltimore, a body corporate, (hereinafter called the Company), brings this its bill of complaint against Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, members, constituting the Public Service Commission of Maryland, (hereinafter called the Commission), and complaining says:

1. The Company is a Maryland corporation and a street railroad corporation as defined in the Public Service Commission Law and owns and operates street railway property in Baltimore City and Baltimore and Howard Counties. The defendant Harold E. West is the chairman and the defendants J. Frank Harper and Steuart Purcell are members of the Public Service Commission of Maryland and all constitute the Public Service Commission of Maryland.

2. Order No. 8240, passed by the Commission on May 26, 1924, fixed the Company's base rate fare at seven and one-half cents, when checks are purchased, or eight cents cash, with a four cent fare for children, school tickets at five cents and commutation tickets at special rates, and said fares were continued in effect by Order No. 10,072 passed by the Commission on March 9, 1926.

3. As is recited in the opinion of the Commission in the case hereinafter referred to, the Company "on Aug-

ust 1, 1927, filed with this Commission an application for an increase in the rates of fare charged by the Company from eight cents cash with two tokens for fifteen cents, to a ten cent flat rate, asserting that the existing rate of fare 'is inadequate to give a fair return on the value of your petitioner's properties devoted to the public service, and that the net income of your petitioner has constantly fallen short of the amount estimated by the Commission as necessary for good credit and satisfactory service to the public.'

"The application pointed out that the revenue of the Company had been falling steadily, that taxes, wages and other items included in the cost of operation

> 'have increased, so that your petitioner is now confronted with an emergency which requires immediate relief, if it is to continue to perform its public service, maintain its credit and secure necessary money to provide new cars and other equipment. * * * your petitioner believes that a ten cent fare is necessary to enable it to serve the public adequately and obtain funds necessary for the coming years to keep pace with the growing needs of the City, and obtain a fair return on the fair value of its properties.'

"The Company thereupon asked for the establishment of a flat fare of ten cents cash, half fare of five cents for children under twelve years of age, school tickets at five cents each and commutation tickets at special rates. It also asked that the Commission put into effect at once 'substantially increased fares' to meet the emergency the Company asserted it was facing by reason of its decreasing revenues, pending the establishment of permanent rates of fare.

"The application of the Company, therefore, was two fold. It asked for the establishment of an emergency rate of such amount as the Commission might regard to be sufficient, and a permanent rate of ten cents.

"The Commission first heard the application for the emergency increase, the hearings beginning on September 6 and ending September 14. The taking of testimony occupied five days. On September 20, 1927, the Commis-

sion passed Order No. 11802 denying the application for an emergency rate of fare, on the ground that the Company had failed to show that such an emergency existed in the affairs of the Company as to warrant a temporary increase in fares (*i. e.*, had failed to show "that the public interest requires the establishment of substantially increased fares as temporary emergency fares"), or that such increase was 'necessary for the purpose of providing adequate and efficient service, or for the perservation of property.'

"By the same order the Commission set October 26 as the date for beginning the hearing of the application for the permanent increase in the fare rate, the date later being changed to October 27. The taking of testimony in this hearing occupied eleven days and three additional days were devoted to argument of counsel. The case was finally submitted on December 10, 1927."

4. As is also recited in the opinion of the Commission in the case aforesaid, "the communities and citizens of Halethorpe, Arbutus and Leeds," in Baltimore County, intervening by counsel, "alleged discrimination against the communities mentioned because the length of the ride to the center of the City, for which they are charged two fares, is less than car riders of other communities receive for one fare," and asked that said communities be given a single fare instead of two fares.

5. On Febrary 10, 1928, the Commission in the case aforesaid filed an opinion and passed Order No. 12639 (of which the opinion was made part), by which, among other things, (1) the application of the Company for the establishment of a flat fare of ten cents was denied, (2) the Company from and after midnight of February 12, 1928, and until further order of the Commission, was permitted to charge a base rate fare of eight and one-third cents when checks are purchased or nine cents cash, and five cents for children, (3) the first fare zone on the Halethorpe line was extended to the terminal at Halethorpe and (4) all other fares were continued. A copy of said opinion and order is filed herewith as part hereof marked "Plaintiff's Exhibit A."

6. In its opinion aforesaid the Commission found (1)

that the present fair value of the Company's property used in the public service is $75,000,000 and (2) that the annual return that can reasonably be expected by the Company from the rates fixed by the order last mentioned is $4,691,606 and (3) amounts to a return of 6.26 per cent. on the fair value of the Company's property. The overwhelming weight of the evidence before the Commission showed, there was no substantial evidence to the contrary and the fact is (1) that the fair value of the Company's said property was and is more than $75,000,000, (2) the annual return that can be expected by the Company from said rates is less than $4,691,606, and (3) an annual return of 6.26 per cent. would be substantially less than a fair return such as the Company is entitled, under the Constitution of the United States, and also under the Maryland Bill of Rights and the Public Service Commission Lay, to be permitted to earn. Said order of the Commission, therefore, and any prior orders of the Commission limiting the Company to the same or lower rates, are contrary to the Fourteenth Amendment of the Constitution of the United States and to the Maryland Bill of Rights and the Public Service Commission Law and are null and void, and, so long as they are enforced, deprive the Company of its property without due process of law, and said orders and the rates, regulations, practices, acts and services fixed thereby are unlawful and unreasonable.

7. In comparison with the value of property, volume of business and magnitude of interests, public and private, involved, the issues of fact presented by the Company's application of August 1, 1927, or arising in the course of the hearings had thereon and decided in the Commission's opinion or order were few. This resulted from two facts: (1) The fair value of the Company's property had already been exhaustively investigated by the Commission in a valuation case under Section 30 of the Public Service Commission Law and finally ascertained by an order of the Commission which on appeal had been confirmed by the Circuit Court of Baltimore City. On appeal to the Court of Appeals the case had been remanded for further proceedings on the sole question of the amount of the value of easements.

This question had been reheard by and submitted to the Commission and was decided by the Commission in an opinion filed and Order No. 12630 (of which the opinion was made part) passed on February 1, 1928. The entire record in said valuation case was offered in evidence at the hearings on the Company's application of August 1, 1927. (2) In four previous rate cases before the Commission between 1918 and 1924, questions as to the Company's operations, revenues, expenses, etc., had been exhaustively investigated and the facts fully ascertained by the Commission. The Commission also has been kept fully informed as to such matters by periodic reports filed with it by the Company pursuant to orders of the Commission in these various rate cases. Although the question what is a fair rate of return on the Company's property had never been definitely decided or squarely presented before the Company's application of August 1, 1927, yet in the valuation case and in some of the rate cases the question had received consideration and material evidence had been offered.

8. In each and all of the following respects Order No. 12,639 of the Commission, and the Commission's opinion made a part of said order, and any prior orders of the Commission limiting the Company to the same or lower rates, and the rates, regulations, practices, acts and services fixed by said orders or any of them are unlawful, unreasonable, arbitrary, unsupported by any substantial evidence, contrary to the facts established by substantial evidence, confiscatory and contrary to the Fourteenth Amendment of the Constitution of the United States and to the Maryland Bill of Rights and the Public Service Commission Law and null and void, and so long as they are enforced deprive the Company of its property without due process of law:

(a) The maximum rates of fare which by said orders the Company is now permitted to charge and collect are grossly inadequate to provide for the necessary expenses of its public service and for the consumption of its property enployed in such service and to yield a fair return upon the fair value of its property so employed.

(b) The percentage which the Commission found

would be the rate of return upon the fair value of the Company's property yielded by the fares established by said order was adopted by the Commission as a fair rate of return solely for reasons and upon considerations that have no true relation to the fairness of a return and is a grossly inadequate rate of return to compensate the Company for the use of its property in the public service without confiscation of its property.

(c) The amount which the Commission determined would be a proper annual allowance out of earnings to provide for depreciation and retirement of the Company's property used in the public service is grossly inadequate for that purpose and was fixed by the Commission upon a basis that has no true relation to the amount required for said purpose.

(d) No allowance was made, in determining the present value of the Company's property upon which the rate of return from the rates established must be calculated, for the net additions to its property since January 1, 1924.

(e) The Commission by said order burdened the Company with a substantial loss of revenue by requiring it to abolish the second fare upon its Halethorpe line, which loss, without any compensating offset, and without any lawful reason for abolition of said fare, further diminishes the inadequate return upon the Company's property.

9. That the action of the Commission in so refusing to allow the Company to charge and collect for its service the rates of fare proposed and required by it, limiting it to the rates specified and provided in said opinion and said order of February 10, 1928, and abolishing its second fare on its Halethorpe line is therefore not only unreasonable but confiscatory, unlawful and void, and constitutes a taking of the Company's property without adequate compensation and without due process of law, and will, unless the Commission be enjoined and prohibited by this Honorable Court from enforcing said prior order or any previous or other order purporting to prescribe the same or any lower rate, or any rate not

sufficient to enable the Company to earn a fair return, result in irreparable injury and damage to the Company.

10. In view of the fact that the Company is suffering daily confiscation of its property by the operation of the Commission's orders, the Company will suffer immediate and irreparable loss and damage unless the operation and effect of said orders are immediately enjoined or restrained or suspended or stayed by this Honorable Court by a preliminary injunction or a restraining order. To the end therefore:

1. That the aforesaid Order No. 12,639 of the Public Service Commission of Maryland, the defendants herein, passed on the 10th day of February, 1928, insofar as it purports to limit the rates of The United Railways and Electric Company of Baltimore, the plaintiff herein, so as to prevent the plaintiff from charging a flat fare of ten cents or from making similar increases in commutation and other special rates or from continuing the first and second fare zones on the Halethorpe line as they existed on the date of said Order, and any prior orders of the Commission insofar as they purport so to limit the rates of the Company, and the rates, regulations, practices, acts and services fixed by said orders or any of them insofar as they purport to limit the Company as aforesaid, be adjudged and decreed to be unlawful, unreasonable, unconstitutional, null and void and be vacated and set aside.

2. That the defendants, Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, members, constituting the Public Service Commission of Maryland, and their respective successor in office, agents and attorneys, and all persons acting under their authority may be perpetually and also preliminarily pending this unit, restrained and enjoined from enforcing or continuing in force against the plaintiff the aforesaid Order No. 12,639, insofar as it purports to limit the rates of the plaintiff so as to prevent the plaintiff from charging a flat rate of ten cents or from making similar increases in commutation and other special rates or from continuing the first and second fare zones on the Halethorpe line as they existed on the date of said Order, or any prior

orders of the Commission insofar as they purport so to limit the rates of the Company.

3. And that the plaintiff may have such other and further relief in the premises as its case may require.

May it please your Honor to grant unto the plaintiff the writ of subpoena directed to the defendants, Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, members, constituting the Public Service Commission of Maryland, and each of them, commanding them and each of them to be and appear in this Honorable Court on some certain day to be named therein to answer the premises and abide by and perform such order or decree as this Honorable Court may make in the premises.

And as in duty bound your orator will ever pray.

(Signed) HENRY H. WATERS,

VENABLE, BAETJER & HOWARD,

HAMAN, COOK, CHESTNUT, & MARKELL,

J. C. FRANCE,

Solicitors for Plaintiff, The United Railways and Electric Company of Baltimore.

State of Maryland, City of Baltimore, SS.:

I hereby certify that on this 13th day of March, 1928, before me, the subscriber, a notary public of the State of Maryland, in and for the City of Baltimore aforesaid, personally appeared Charles D. Emmons and made oath in due form of law as follows:

"I am the President of The United Railways and Electric Company of Baltimore, the plaintiff in the aforegoing bill of complaint. I am authorized to make this affidavit on behalf of The United Railways and Electric Company of Baltimore. I have read the aforegoing bill. I have personal knowledge of the matters and facts

stated in the aforegoing bill. The matters and facts stated in the aforegoing bill are true to the best of my knowledge and belief."

CHARLES D. EMMONS.

Subscribed and sworn to before me this 13th day of March, 1928.

As witness my hand and notarial seal.

CHARLES J. KUHLMAN,

Notary Public.

Upon the aforegoing bill of complaint and affidavit, it is this 13th day of March, 1928, by the Circuit Court No. 2 of Baltimore City ordered that a writ of injunction be issued as prayed in said bill unless cause to the contrary be shown by the defendants within twenty days after service of a copy of this order of this Bill of Complaint.

JOSEPH N. ULMAN.

True Copy Test:

JOHN PLEASANTS,

Clerk.

(2)

PLAINTIFF'S EXHIBIT A, FILED WITH THE BILL OF COMPLAINT.

PUBLIC SERVICE COMMISSION OF MARYLAND.

OPINION

Before the Public Service Commission of Maryland

Case No. 2648

In the matter of the application of The United Railways and Electric Company of Baltimore for the establishment of a permanent rate of fare of 10 cents and for the establishment of a temporary emergency rate of fare pending the establishment of such permanent rate of fare.

Appearances:

Thomas J. Tingley, Esq., People's Counsel.

Simon E. Sobeloff, Esq., Deputy City Solicitor, with whom was A. Walter Kraus, Esq., City Solicitor, on the brief, for the Mayor and City Council of Baltimore.

Linwood L. Clark, Esq., and Eli Baer, Esq., for the People's Committee.

Messrs. Benson, Rowe and Cullen, for the communities and citizens of Halethorpe, Arbutus and Leeds.

Lester L. Barrett, Esq., for Landsdowne Improvement Asociation.

William H. Lawrence, Esq., for The Morrell Park Improvement Association.

William A. Toole, Esq., for the Socialist Party of Maryland.

Mrs. Ida May Waters, Chairman, Housewives Alliance.

Mr. John W. Gray, representing The Merchants Association of Northeast Baltimore.

Harry M. Berman, Esq., for W. Wallace, et al.

Joseph C. France, Esq., Messrs. Venable, Baetjer and Howard, Messrs. Haman, Cook, Chesnut and Markell, Henry H. Waters, Esq., and Albert R. Stuart, Esq., for The United Railways and Electric Company of Baltimore.

West, Chairman. Filed February 10, 1928.

The United Railways and Electric Company of Baltimore on August 1, 1927, filed with this Commission an application for an increase in the rates of fare charged by the Company from eight cents cash with two tokens for fifteen cents, to a ten cent flat rate, asserting that the existing rate of fare "is inadequate to give a fair return on the value of your petitioner's properties devoted to the public service, and that the net income of your petitioner has constantly fallen short of the amount estimated by the Commission as necessary for good credit and satisfactory service to the public."

The application pointed out that the revenue of the Company had been falling steadily, that taxes, wages and other items included in the cost of operation

> "have increased, so that your petitioner is now confronted with an emergency which requires immediate relief, if it is to continue to perform its public service, maintain its credit and secure necessary money to provide new cars and other equipment. * * * Your petitioner believes that a ten cent fare is necessary to enable it to serve the public adequately and obtain funds necessary for the coming years to keep pace with the growing needs of the City, and obtain a fair return on the fair value of its properties."

The Company thereupon asked for the establishment of a flat fare of ten cents cash, half fare of five cents for children under twelve years of age, school tickets at five cents each and commutation tickets at special rates. It also asked that the Commission put into effect at once "substantially increased fares" to meet the emergency

the Company asserted it was facing by reason of its decreasing revenues, pending the establishment of permanent rates of fare.

The application of the Company, therefore, was two fold. It asked for the establishment of an emergency rate of such amount as the Commission might regard to be sufficient, and a permanent rate of ten cents.

The Commission first heard the application for the emergency increase, the hearings beginning on September 6 and ending September 14. The taking of testimony occupied five days. On September 20, 1927, the Commission passed Order No. 11802 denying the application for an emergency rate of fare, on the ground that the Company had failed to show that such an emergency existed in the affairs of the Company as to warrant a temporary increase in fares, or that such increase was "necessary for the purpose of providing adequate and efficient service, or for the preservation of property."

By the same order the Commission set October 26 as the date for beginning the hearing of the application for the permanent increase in the fare rate, the date later being changed to October 27. The taking of testimony in this hearing occupied eleven days and three additional days were devoted to argument of counsel. The case was finally submitted on December 10, 1927.

The case against the Company was presented by Mr. Thomas J. Tingley, People's Counsel, who represented the people as a whole, Messrs. Linwood L. Clark and Eli Baer, counsel for the People's Committee, which is composed of representatives of civic and improvement associations, and Mr. William A. Toole, counsel for the Socialist Party.

Messrs. Charles C. Wallace and John H. Lewin, who were later succeeded by Messrs. A. Walter Kraus and Simon E. Sobeloff, of the Law Department of Baltimore City, represented the Mayor and City Council of Baltimore, who took the position that the City would be opposed to an increase unless the increase should be proved necessary in order to allow the Company to render proper and adequate service, and secure a fair return upon its property.

Messrs. Carville D. Benson and James K. Cullen appeared as counsel for the communities and citizens of Halethorpe, Arbutus and Leeds, patrons of No. 3 car line, who alleged discrimination against the communities mentioned because the length of the ride to the center of the City, for which they are charged two fares, is less than car riders of other communities receive for one fare.

The Company's position as shown by the testimony of its witnesses and set forth in the briefs of counsel was as follows:

1. Flat ten cent fares (with corresponding increased special fares) are in themselves reasonable to the customers—not more than the service is worth.

2. Such increased fares will yield the Company *less* than a fair return on the fair value of its property—even less than the constitutional protection against confiscation.

3. *Compulsory* limitation of the Company's rates to yield a *maximum* of less than 8 per cent. is confiscation.

On the other hand, People's Counsel's position was as follows:

1. The rates now charged the public are all that the service is worth.

2. Even if they do not exceed service value, they are a burden to the riding public.

3. If the rates are only burdensome and do not exceed service value, the Commission should hew as close to the line of confiscation as it can.

Mr. Clark and Mr. Toole took substantially the same position as that taken by the People's Counsel.

PROBLEMS TO BE CONSIDERED

The problems before the Commission are neither simple nor easy of solution. They involve the consideration of a number of issues in addition to that of determining a fair return upon the fair value of the Company's property and fixing a rate which will yield that return. Most

of these matters have been referred to by counsel and one or two have been in the Commission's mind for some time. These latter, while perhaps beyond the jurisdiction of the Commission, still have a bearing upon the situation.

Among the matters which the Commission must take into careful consideration is whether the service rendered by the Company is worth more than the people are now paying for it. The Supreme Court of the United States in Smyth v. Ames (169 U. S. 466), has decided that charges for service may not exceed the value of that service, irrespective of the rate of return. The problem is to find a measure by which it can be determined whether the present rate is all the service is worth and, if not, what rate would be commensurate with the value of the service and proper for the people to pay.

Another problem is to determine what will be a fair rate of return; not for an electric company, or a water company, but for this particular company and in the light of the particular conditions surrounding it.

Another is the question of maintaining the Company's credit so that additional capital may be secured to meet the growing demands of the public; whether that credit can be maintained at all by rates that will be fair to the public and no more than the service is worth in view of the existing financial structure of the Company; and whether something other than increased rates is not needed to establish credit on a firm foundation.

Another is whether a receivership for the Company would or would not be desirable and, if there should be a receivership, what would be its effect upon the rate of fare and upon the business life of the City.

Another is how far the railway system and the service it renders are necessary to the comfort and well being of the people of Baltimore and the maintenance of property values, particularly in the outlying sections; and whether there is a practical substitute which would render as good and as dependable service at less cost.

Another is making clear to the people how much of what they pay in street car fares is actually for the service the Company renders its customers, and how much

is for the purchase and maintenance of purely public institutions such as parks, stadium, swimming pools and the like.

And finally, will the Commission be justified in extending a single fare zone about two miles beyond the City limits because the distance traveled to the end of that zone is less than is traveled in some other directions for a single fare.

COMPANY'S RIGHT TO A FAIR RETURN

There can be no question as to the right of the Company to a fair return upon the fair value of its property, provided it can earn that return at rates inherently fair to the public and which are not more than the service rendered by the Company is worth. The Supreme Court of the United States has settled that matter so often that it would be idle to discuss it. Moreover, if it can earn a fair return on the fair value of its property, at rates which are fair to the public and not more than the service is worth, then it is rate of return with which the Commission is concerned and not any particular amount to surplus. It is true that the Commission, in earlier cases, fixed rates which it estimated would yield a minimum, of $1,000,000 or a maximum of $1,500,000 to surplus, annually, or from 1⅓ to 1½ times the Company's fixed charges. But that was before the value of the Company's property had been established by this Commission. Since $75,000,000 has been found to be the value of the Company's property, that figure must be used as the base for calculating return.

People's Counsel contends that the present rate of fare is all the service is worth, while the Company asserts that a flat ten cent fare is reasonable to the Company's customers and is not more than the service is worth. People's Counsel holds that the present rates are shown to be burdensome (even if they do not exceed the actual worth of the service) by the fact that the number of revenue passengers has shown a decided decline in 1927 compared with 1926. The Company insists that this decline is due to automobile competition, the substitution of a more expensive form of tranportation for a cheaper one, and not because the rate is burdensome. In sup-

port of his theory that the present rate of fare is all or more than the service is worth, the People's Counsel cites this Commission's opinion in the 1919 rate case when the fare was increased from five to six cents. In that case the Commission said:

> "This Commission has concluded from the facts before it in this case that the fair worth of reasonably adequate street railway service to the community served by the respondent company, *and under existing conditions,* is six cents * * *." (10 P. S. C. Md. 39) (Italics ours).

People's Counsel used wholesale commodity and other index figures to indicate that if six cents was the fair worth of the service in 1919, there is no justification for raising the fare above the present level.

It is true that the Commission did use the expression quoted by People's Counsel, but it is also true that the Commission could not have meant that the service was worth *no more* than six cents. The Commission held that it was worth what the Company asked, which was six cents. The rate of fare existing prior to the increase on October 1st, 1918, was five cents, and had been five cents for many years. That rate had been fixed by the General Assembly, and not by the Commission. The Company filed on August 28, 1918, effective October 1, 1918, the proposed rate of six cents. The Commission, on its own motion, instituted an investigation to determine whether the increase was justified and found that the Company, by reason of largely increased expenses, was in a precarious financial condition, and, reluctant as it was, and always is, to increase rates, it approved the exact amount of the increase which the Company held that it needed, finding that "under existing conditions" the service was worth six cents. Conditions continued to change for the worse and, as they changed, the rate was increased to six and one-half, later to seven, and finally to seven and one-half cents. In granting these increases the measure used in determining the amount of increase was not the worth of the service, but the cost of rendering it, plus a reasonable profit, the Commission holding that a minimum annual balance to surplus of $1,000,000 and a maximum of $1,500,000 would be reasonable.

It is proper to say at this point that it was never intended by the Commission that the Company should profit to the extent of the last increase of one-half cent in fare and that it did not so profit. In the case in which the seven and one-half cent rate was established it was shown that the Company would fall short of the minimum of $1,000,000 which the Commission had said the Company could earn as a surplus, and that about $300,000 would be required to bring the amount to surplus up to $1,000,000. At that time an increase of one-half cent in the rate of fare was estimated to yield in the neighborhood of $1,150,000. In granting the increase from seven to seven and one-half cents, the Commission ordered extensions of zones, establishment of bus lines, and improvements to service, estimating that of the amount to be yielded by the one-half cent increase, the Company would receive only $205,876. As matters turned out, the Company did not receive even that much from the increase, which went almost entirely to the adjusting of inequalities and to improvements in service. In deciding the 1924 case the Commission did not feel that the falling off in riding had been due to the rate of fare. It pointed out in its opinion that after the increases from five to six cents, and then to six and one-half cents, riding actually increased, while for the year 1920, when the rate was increased to seven cents, the Company carried the greatest number of passengers in its history. It stated that it believed the subsequent decreases in riding had been due to the business depression which set in about the middle of 1920 and to the constantly increasing use of the automobile.

The Commission believes that today the falling off in riding is due, not to the amount of the fare, but in part to the slump in business which has been felt in all parts of the country and which continues, and is still larger part to the more general use of the automobile. Automobile competition promises to be greater in 1928 than it was in 1927. The country is now witnessing the most active automobile selling campaign that the industry has ever known. If it be true, as counsel for the Company state (Brief, page 6), that the people of Baltimore paid more for gasoline in 1926 than they paid for carfares, they will probably continue to pay more in 1928.

RAILWAY SERVICE A NECESSITY.

That the service rendered by the Company is a necessary and vital service to the people of Baltimore, is indicated by the fact that the demand upon the system during morning and evening rush hours is almost greater than the Company can meet. Time was when the service was used for pleasure. That day has gone. The Motor car has largely taken the place of the street car for pleasure riding. The street cars are used only by those who find them necessary or convenient to get to and from places of employment, or for other trips about the city. The service to the people for such trips is almost indispensible. It would be practically impossible for all the people who use the street cars to reach their places of business or employment, and return to their homes, by any other means of transportation now available. And if the service is necessary to them they cannot expect to be transported for less than the cost of transporting them, plus a fair return for the use of the agency of transportation. Even at somewhat increased cost the street car service still would be the *cheapest* form of transportation the people could get.

That the extension of the railway system into the suburbs has resulted in the development of the sections which the lines serve is beyond question. Even in these days of almost universal use of the automobile, property values, except perhaps in that part of the City as it existed prior to the annexation of 1888, are dependent largely upon street railway transportation. Withdrawal or material curtailment of service would be felt immediately in the lowering of real estate values, for there is no transportation agency which could give so comprehensive a service at such low cost.

Moreover, the development of property and the creation of higher values along the outlying lines of the Company often have been largely at the *expense* of the Company. While creating increased values in land by the extension of its lines and service, thus benefiting immediately the property owner (and the City and County by increasing the taxable basis), the Company has no way of sharing in the increased values it creates until the time comes when there is sufficient development in new

territory to produce enough traffic to make the operation of the lines compensatory. Until that time is reached, the Company is compelled to give service to new territory at a loss. This is not the case with gas, electric or telephone companies, for as lines of such companies are extended into new or sparsely settled sections, those receiving and benefiting by their service are required to pay part of the cost of building the extensions, being reimbursed as new customers come on the lines. Many of the Company's lines which extend into the suburbs are still operated at a loss.

Much has been said about the loss of the short rider and this is often attributed to the price of the car ride. This may be true in some cases, but it does not appear to be so with a great many. To the extent that the short rider has been lost, this loss is due, it seems to the Commission, not so much to the cost of the ride but to the length of time the ride itself takes. This is due to the congestion in the streets, caused by the automobile which not only cuts into the revenues of the Company but slows up the operation of the street cars, so that an ordinarily vigorous person frequently can walk through the congested business section in less time than he can make the journey on a street car. With automobiles parked on each side of a street all traffic is forced on the car tracks, slowing up the cars and making street car operation more costly for the slower the cars run, the more expensive it is to operate them. One reason for the Company's plight today is the fact that following annexation in 1918, the city zones on the street car system were extended to the new city line, this line for nearly the entire distance around the City having been extended about two miles. Annexation, while a desirable thing for the City, did not benefit the Railways Company in the slightest degree. Indeed, it imposed additional obligations upon it, and when extensions of fare zones were made it caused extensive loss of revenue which had to be made up through rate increases. In fact, taking all things into consideration, including the cost of giving the service, the extension of lines and fare zones, the greater transfer privileges, the auxiliary bus lines and the like, the Commission believes that street car riders as a whole today receive relatively much more for the fare they pay than they ever received for a five cent fare.

WOULD A RECEIVERSHIP HELP CAR RIDERS

Mr. Toole, counsel for the Socialist Party, declares in his brief that:

> "* * * it (the Company) should be compelled to give service and proper service to the citizens of Baltimore *at the present rate of fare, until it is properly forced into a reeciversh*ip where a proper reorganization could be effected and an onerous burden removed from the shoulders of the citizens of Baltimore." (Italics ours).

While this seems to indicate that Mr. Toole believes that if the Company should be compelled to continue service at the present rate of fare, the Company would be forced into a receivership, it is difficult to see how a receivership would benefit the car riders of Baltimore, or how any burdens would be lifted from their shoulders, even if the Commission had the power to force a receivership. It is perhaps true that a reoganization of the Company would be effected, but it is hard to understand how that would reduce fares. Subject to the limitation that the fare shall not exceed the worth of the service, fares are based on two elements, cost of operation and the value of the property used and useful in the public service. This Commission has fixed a value of $75,000,000 for the Company's property and by law the Company would be permitted to earn a return upon that sum. The securities of the Company might be scaled down, but the *value of the property* could not be reduced by any action the receivers might take. A reduced value might be found by the Commission as a result of a general lowering of prices which would make the property less costly to reproduce than it was when such value was established. And although the Company's *securities* might be reduced below their present total par value, the Company, or the receivers, could, subject to the provisions of the law, issue securities to the extent of the value found by the Commission (Section 381 of Article 23, Bagby's Annotated Code).

A receivership for a property valued at $75,000,000 with gross revenues of more than $16,000,000 a year would be an expensive matter. There would be large

court costs, receivers' fees and like expenses, in addition to the usual operating costs, all of which would have to come out of the rates of fare.

A very serious aspect of the situation is the effect a receivership would have upon the community. The Railways Company is locally owned, perhaps 90 per cent. of all its securities being held in Baltimore, or at least in Maryland. Practically every financial institution in Baltimore, and many throughout the State, hold them either as investments of their own or as security for loans, or both. A receivership, with its resultant depression of the market value of the Company's securities, would seriously disturb the business life of Baltimore and might seriously affect the employment situation.

The foregoing discussion is altogether academic, and the Commission has entered upon it simply to indicate that no good, but much harm, not only to the car riders, but to the whole community, would, in the opinion of the Commission, result from a receivership for the Company.

REORGANIZATION OF FINANCIAL STRUCTURE DESIRABLE

A reorganization of the financial structure of the Company is, however, another matter, and it is one which the Commission has had in mind for a long time, even though it may be outside the Commission's jurisdiction. The Commission had in mind an expression of its views on the subject in its opinion in the seven and one-half cent fare case, filed May 26, 1924, but felt constrained to eliminate all reference to this subject from that opinion because of the possible bad effect it might have upon the Company, which in turn might be reflected in the fare situation. The matter now being one of common discussion, the Commission feels free to set forth its views not because a reorganization of the financial structure may affect the rate of fare except indirectly, but because of its probable effect upon the Company's credit.

In every rate hearing in which an increase has been asked, emphasis has been laid upon the importance of establishing a rate which would sustain the Company's

credit, and which would enable it to borrow money for its capital expenditures at lower rates. Recently emphasis has been laid upon the paying of dividends in order to maintain credit, and increase the borrowing capacity of the Company. Frankly, the Commission does not believe credit is helped by paying dividends out of surplus when they have not been earned, and by distributing the money held in the surplus account to the stockholders, from whom it cannot be recovered, rather than retaining it in the surplus account where it is, at least, an actual, tangible basis for credit. The Commission has no comment to make upon the statement that money in the surplus account actually belongs to the stockholders, and that it is the right of the stockholders to have it paid to them in dividends. So does the surplus actually paid in by the stockholders of a bank belong to such stockholders, but it is not paid back to them in dividends, particularly when earnings are low, as a means of maintaining the bank's credit.

The Commission has constantly been cognizant of the importance of credit to the companies under its jurisdiction and of the maintenance of that credit. As far back as 1918, when the six cent fare case was heard, the Company insisted that the increased rate was necessary to maintain its credit. In its opinion in that case, filed January 7, 1919, the Commission said on that subject:

> "The Commission is fully mindful of the desirability of upholding the credit of all public utilities subject to its jurisdiction to the fullest extent consistent with justice to the general public. But it is also fully mindful of the ultimate dangers of a false credit bolstered up by orders establishing rates for services which are not justified by the fair worth of the service rendered."

That is the Commission's position today. In any rate of fare allowed, out of which dividends may be paid, it is not allowing that amount for the payment of dividends for the sake of maintaining the Company's credit, but because the Company is entitled to that amount to surplus as a matter of right; and the Company, in the ex-

ercise of its own discretion, can pay it out in dividends or retain it in its surplus account.

As a matter of cold and possibly unpleasant fact, this Commission does not believe that the Company's credit can be permanently bolstered up or maintained by the payment of dividends as long as its financial set up remains as at present. The structure is top heavy. There are too many bonds outstanding in proportion to the stock. The stockholders have too small an equity in the property. Including its notes, the Company has outstanding $67,176,200 in securities representing funded debt and $20,461,200 in stock. Not only is the par value of these securities $12,637,400 in excess of the value of the property as fixed by the Commission, but the ratio of funded debt to total capitalization is approximately 76 per cent. The ratio of funded debt to value of the property found by the Commission is approximately 90 per cent. The Commission believes that the ratio of debt to stock ought not to be greater in a company of this sort than 67 to 33, and does not believe its credit can be permanently established and maintained until approximately this ratio is created. It is of the opinion that the par value of the securities ought not to exceed the value of the property as found by the Commission, and, for safety, should be even less than the value found. It must be remembered that the value of this property was established largely on present day costs, which had increased very much in the years immediately preceding the valuation. The time may come when reduced costs of reproduction may necessitate a lower valuation, in which event, if the par value of securities is now scaled down only to the Commission value, the Company again may find itself in the position it now is in; that is, with securities outstanding exceeding in par value the then value of the property.

There are other defects in the Company's financial structure in addition to the disproportionate ratio of bonds to stock. It is admitted that under present conditions the Company cannot sell junior securities, such as preferred and common stock, to obtain money for capital expenditures. Nor can it issue bonds on the property of The United Railways and Electric Company of Baltimore in order to secure new capital, because the

Company has a closed mortgage and any new property obtained is immediately covered by that mortgage. For such new capital as it may obtain and for which it must issue bonds it must adopt the expedient of issuing these bonds in the name of a subsidiary, The Maryland Electric Railways Company, procuring property with that money, and then leasing the property to the United for a sufficient sum to pay the interest on the bonds and provide for their retirement at maturity.

A reorganization of the financial structure of the Company would naturally result in the substitution of a more flexible mortgage for the old closed mortgage. This would enable the Company to provide for its capital requirements by the issuance of new securities as new property is acquired, on the basis, perhaps, of 67 per cent. of bonds and 33 per cent. of stock.

While the Commission recognizes it has the authority to order any such reorganization as is here outlined, it trusts that the Company will take the problem under earnest consideration and work out a plan of financial reorganization that will help solve its difficulties concerning credit.

EFFECT OF PARK TAX ON CAR FARES.

An element in the street railway situation in Baltimore which results in higher rates of fare, and which does not obtain, so far as this Commission is aware, in other cities, is the Park Tax. This matter is better understood now by the car riding public than it was some years ago. It is purely and simply a tax on the street car riders for the support of the city parks. The Company does not pay it. It is paid by the riders and the Company simply acts as collector, receiving approximately one-half cent on each fare the rider pays and turning the money over to the City quarterly. It was, perhaps, a tax on the Company in former years, but now it is an expense which must be deducted before any rate of return is calculated. The result is that the parks are maintained, stadium and swimming pools built, tennis courts, golf courses, base ball fields and the like established, and park roads maintained for automobilists, at the expense of the street car rider instead of the general public. The

street car riders have contributed for these purposes since 1910, when the Company was put under Public Service Commission regulation, the sum of $15,406,794. This, of course, is in addition to the general taxes and such special charges as those made for street paving and for maintaining the paving between the tracks and for two feet on each side, which are also paid by the street car riders.

The parks must, of course, be maintained. The only question is whether they ought to be maintained by the street car riders or by the taxpayers generally. The requirement as to the Park Tax is a legislative one and can only be changed by an Act of the General Assembly. The sum realized by the Park Tax is equal to about eleven cents on the tax rate of Baltimore City. It could hardly be assumed that any municipal administration would consent to that amount being put upon the tax rate in a lump, but an arrangement might be made by which the City would consent to the passage of an Act reducing the 9 per cent. tax one-ninth each year, which would gradually relieve the street car riders of this burden and wipe it out entirely in a period of nine years.

The purpose of the Commission in discussing this matter is not to make any recommendation about it whatever, but simply to point out that part of the amount which street car riders pay as car fare is for no railway purpose whatever but for the maintenance of the parks and park activities.

WHAT VARIOUS RATES WOULD YIELD.

In the hearing before the Commission, the Company submitted exhibits, supported by testimony, to show that the balance to surplus for 1927 would amount to only $424,388. (Company Exhibit 7 C.) This figure was reached on the basis of nine months actual and three months estimated receipts and expenditures, which latter included estimates for increased expenses of $120,000 for power, $120,000 for accidents and damages, and $75,000 for increased taxes, for the year. The amount of net income thus arrived at, $424,388, indicates a return of slightly less than five per cent. The estimated falling off in passenger revenue was 3.21 per cent. for the year.

Actual figures for the whole year became available before the Commission reached its conclusion in the case. They show an actual net income of $682,187, without the deductions for increased expenses. If these were applied to the figure $682,187, the net income would be reduced to $409,712, after allowance for federal income tax. But in the one item of property taxes the increase will be $20,000 instead of $75,000, which makes the figure for net income, adjusted for federal income tax, $457,287, indicating a return of slightly more than 5 per cent. The actual falling off in passenger revenue for the year was 3.2 per cent.

The Company claimed that its expenses for 1928 over 1927 would be increased by the amounts heretofore mentioned, together with an actual amount of $260,000 additional for wages. This wage increase is made up of an increase of one cent an hour for all employes, contracted for unconditionally for 1928, and of one cent an hour additional promised the employees if any rate increase whatever should be allowed by the Commission.

The wage increases are actual and the amount thereof known. The Commission feels that the estimates for the others are too high. It allows for an increase in power expenses of $75,000 instead of $120,000, of $100,000 for the settlement of claims for accidents and damages instead of $120,000, and the actual figure by which taxes will be increased, $20,000, instead of $75,000.

The Company estimates that there will be a falling off in passengers for 1928 of 5 per cent. It estimates that the falling off during 1927 of approximately 3 per cent. will continue, and that if an increase in the rate of fare is granted it will result in a further falling off of 2 per cent. The Commission feels that the Company is too pessimistic in this matter, notwithstanding the fact that passenger revenue in January, 1928, was 4.68 per cent. below that for January, 1927, and 4.63 per cent. under January, 1926. It believes that even if the automobile competition should be as acute in 1928 as it was in 1927—and it admits this is very likely—the normal increase of the City's population will largely offset the effect of increased automobile competition. Also, it expects an im-

provement in the Company's service which ought to increase riding as well as revenues. It also accepts the statements of the Company's witnesses and counsel, that an increase in fares does not result in any marked decrease in riding. The Company offered elaborate exhibits to sustain this position, and to contradict testimony and exhibits of People's Counsel that fare increases do result in a decrease in the number of passengers.

The Commission has made a number of computations to show, on the basis of the addidtional expenses allowed, what revenues could reasonably be expected by the Company during the year 1928, and what rate of return the Company would receive, based on a straight eight cent fare, a fare of nine cents cash with five tokens for forty cents, a fare of nine cents cash with three tokens for twenty-five cents, one of ten cents cash with three tokens for twenty-five cents, and one of ten cents straight. These computations show the following results, using $75,000,000 as the base for computing return.

ESTIMATED AMOUNT AND RATE OF RETURN, ASSUMING NO DECREASE IN NUMBER OF PASSENGERS.

	8c Flat Fare	9c Cash, 5 for 40c	9c Cash, 3 for 25c	10c Cash, 3 for 25c	10c Flat Fare
Operating Revenues	$17,203,882	$17,357,955	$18,010,178	$18,083,451	$21,344,565
Operating Expenses, Depreciation and Taxes	12,879,211	12,912,883	13,055,423	13,071,436	13,784,136
Operating Income	$ 4,324,671	$ 4,445,072	$ 4,954,755	$ 5,012,015	$ 7,560,429
Non Operating Income	171,000	171,000	171,000	171,000	171,000
Gross Income	$ 4,495,671	$ 4,616,072	$ 5,125,755	$ 5,183,015	$ 7,731,429
Deductions from Gross Income	3,445,000	3,445,000	3,445,000	3,445,000	3,445,000
Net Income	$ 1,050,671	$ 1,171,072	$ 1,680,755	$ 1,738,015	$ 4,286,429
Amount available for Return	$ 4,366,671	$ 4,487,072	$ 4,996,755	$ 5,054,015	$ 7,602,429
Rate of Return on $75,000,000 of property	5.82%	5.98%	6.66%	6.74%	10.14%

ESTIMATED AMOUNT AND RATE OF RETURN WITH VARYING RATES OF DECREASE IN NUMBER OF PASSENGERS.

	8c Flat Fare	9c Cash, 5 for 40c	9c Cash, 3 for 25c	10c Cash, 3 for 25c	10c Flat Fare
No Decrease:					
Amount of Return	$4,366,671	$4,487,072	$4,996,755	$5,054,015	$7,602,429
Per Cent. of Return	5.82%	5.98%	6.66%	6.74%	10.14%
1% Decrease:					
Amount of Return	$4,239,767	$4,359,596	$4,864,182	$4,920,877	$7,443,798
Per Cent. of Return	5.65%	5.81%	6.49%	6.56%	9.93%
2% Decrease:					
Amount of Return	$4,112,862	$4,232,118	$4,731,606	$4,787,722	$7,285,167
Per Cent. of Return	5.48%	5.64%	6.31%	6.38%	9.71%
3% Decrease:					
Amount of Return	$3,985,958	$4,104,641	$4,599,033	$4,654,573	$7,126,537
Per Cent. of Return	5.31%	5.47%	6.13%	6.21%	9.50%
4% Decrease:					
Amount of Return	$3,859,053	$3,977,163	$4,466,459	$4,521,428	$6,967,906
Per Cent. of Return	5.15%	5.30%	5.96%	6.03%	9.29%
5% Decrease:					
Amount of Return	$3,732,148	$3,849,686	$4,333,886	$4,388,281	$6,810,163
Per Cent. of Return	4.96%	5.13%	5.78%	5.85%	9.08%

These figures show that at the varying rates of fare and with various assumptions as to volumn of traffic, the Company would earn a return of from 4.96 per cent. to 10.14 per cent. All these calculations are based on retaining all but the adult and half rate fares now in effect. The computation on the eight cent flat rate puts the half fare at the present rate of four cents, but in the other computations it is raised to five cents.

The Company in its Exhibit No. 24, showed that a ten cent fare would yield an amount available for return of $5,578,079, which is at the rate of 7.44 per cent. on a base of $75,000,000. It computed annual depreciation on the basis of 4 per cent. of depreciable property, making the amount $2,200,000 for this item, instead of calculating it on the old basis of 5 per cent. of operating revenues, used by the Commission. It also allowed for a 5 per cent. falling off in riding.

WHAT CONSTITUTES FAIR RETURN FOR THE UNITED.

The Company has contended that in asking for a ten cent flat fare it was asking for *less* than a fair return, because, according to its figures, the rate of return would be less than 8 per cent. It has cited numerous decisions of the Supreme Court to indicate that that Court regarded 8 per cent. as a fair return, and that any return less than 8 per cent. would be less than a fair return. This Commission does not agree with that interpretation of the decisions. The Supreme Court has not decided that 8 per cent. is the minimum limit of rate of return in all cases. Its findings in each case where it held that an 8 per cent. return was required were based upon the particular facts and circumstances bearing on that particular case. In the Bluefield Water case (262 U. S. 679) decided June 11, 1923, the Court said:

> "A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same g neral part of the country on investments in other business undertakings which are

attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. * * * A rate of return may be reasonable at one time, and become too high or too low by changes affecting opportunities for investment, the money market, and business conditions generally.

"In 1909, this Court, in Willcox v. Consolidated Gas Co. (212 U. S. 19, 48-50) held that the question whether a rate yields such a return as not to be confiscatory depends upon circumstances, locality, and risk, and that no proper rate can be established for all cases; and that, under the circumtances of that case, 6 per cent. was a fair return on the value of the property employed in supplying gas to the city of New York, and that a rate yielding that return was not confiscatory."

In the Dayton-Goose Creek Railway case (263 U. S. 456) the Supreme Court, in an opinion by Chief Justice Taft, said:

" * * the question of the minimum of a fair percentage on value is shown to vary with the circumstances."

This Commission has always assumed that in determining a rate of return, the circumstances surrounding the particular case under consideration would of necessity govern, and that the rate of return would always "vary with the circumstances." It has acted in the past on this assumption and expects to continue to do so until the Maryland Court of Appeals or the Supreme Court lays down a guide to be followed in all cases.

In the case of the Railways Company, the Commission feels that instead of asking *less* than a fair return it has asked a return which the Commission has not exceeded in any case, and which is actually more than the Commission would consider allowing it in view of all the circumstances, even on its own figures; while on the Commission's figures the return would be more than fair, in fact excessive.

The Commission feels that the Company "is entitled to such rates as will permit it to earn a return on the value of the property * * * equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties." The only comparable business undertakings "attended by corresponding risks and uncertainties" that this Commission knows of are those of other street railway companies in the East, and it does not know of such a company which is earning a return of much, if any, more than 6 per cent., no matter what the rate of fare.

It is not contended that because the street railway companies of other cities do not earn a return of more than 6 per cent. that is any reason why the Company in Baltimore should not be allowed to earn more than 6 per cent., provided it can do at rates that are just and reasonable, and no more than the service is worth. It simply points out the fact that railways in other cities, whose business is attended by "corresponding risks and uncertainties," are earning no more than 6 per cent. on the value of their properties.

THEORIES VERSUS FACTS.

Counsel for the Company in their brief (page 84), citing the case of the Pacific Gas Company v. San Francisco (265 U. S. 403), decided June 2, 1924, in which it was found that a return of 7 per cent. was necessary in order to avoid confiscation, state::

> "This decision of the Supreme Court of the United States that in 1913, 1914 and 1915 a return of less than 7 per cent. was confiscatory is consistent with the recent decisions of lower courts above cited—*including the six cited by the Supreme Court itself in the McCardle case*—holding that *now* a return of less than 8 per cent. would be confiscatory."

It may be consistent, as applied to particular and individual cases, but the Commission is not convinced that an 8 per cent. return is a general rule applicable to all cases.

Company's counsel also state (Brief, page 88) that::

> "In not one of those cases in which a utility was held entitled to earn a return of at least 8 per cent. were the risks of the utility business as great as they now are in the street railway business. If those utilities are entitled to a return of at least 8 per cent., this Company is entitled to more than 8 per cent."

This, in the Commission's opinion, by no means follows. It may be pointed out that in not a single case where a utility was held to be entitled to an 8 per cent. return, was that utility a street railway company. As far as this Commsision knows, there is not one in the country that is earning as much as a 7 per cent. return on the present day value of its property. The Commission cannot ignore the significance of that situation. Street railway companies have no reason to be more modest in asserting their rights than gas and electric and water companies, which, on the facts in their particular cases, have been held entitled to a return of 8 per cent. There must have been some reason, other than modesty or regard for the public's purse or even contracts establishing rates of fare, that has kept them from appealing for their rights in court, if their properties were being confiscated by a return of less than 8 per cent., in fact, by a return of less than 6 per cent. Perhaps the consideration that has kept them out of court has been the belief that they could not earn 8 per cent. at rates which the public would pay, and that the effort to get an 8 per cent. return, if allowed by the courts, would, through the operation of the law of diminishing returns, result in their earning even less than they are earning now.

It is true, as counsel states, that in not one of those cases in which a utility was held entitled to earn a return of 8 per cent., were the risks of the utility business as great as they now are in the street railway business. And it is, we believe, because of those very risks that capital is reluctant to invest in street railways, and that no new street railways are being built in the United States today. Witnesses for the Company (Messrs. Hoyt, Burroughs and Fenhagen) testified that an 8 per cent. return would be necessary to get capital to invest in

street railway properties, but none of them showed that any street railway company did or could earn that rate. As a matter of fact, none of them do. Therefore, according to the testimony, it is not possible to get capital, not only for the United Railways, but for any street railway in the country. Yet we do know that capital *is* forthcoming at fair rates of interest for well managed street railway companies which are giving adequate service to the public at reasonable rates, even if those rates do not yield 8 per cent. It may be true, however, that capital could not be obtained for the establishment of a complete, new railway system anywhere in this country.

SHOULD RISK INCREASE RATE OF RETURN.

We do not agree with counsel for the Company in their theory, that, because of the risks, "if those utilities are entitled to a return of at least 8 per cent., this Company is entitled to more than 8 per cent." This Commission feels that the risk of the business, which is largely due to automobile competition, is in fact the element which limits the rate of return which the Company can earn, rather than justifies an increasing return, in the same manner that it limits riding.

The risk which the railway industry now faces is the same risk that confronts any business or industry when new methods of doing a familiar thing developed. Regulation cannot protect regulated industries from that kind of risk. Sail was compelled to give way to steam on the seas. Even if sail had been protected by regulation it could not have been saved by increasing rates or by being granted a fixed return on the value of ships. Canals gave way to the steam railroads. Increased rates could not have saved them. The package freight business of the steam railroads is being taken by motor trucks, and the short distance passenger is being carried in increasing number by busses. The parcel post has taken the small package business from the express companies. The jobbing business in Baltimore is today giving way to direct dealing between manufacturer and retailer. The little electric railway which, in the middle eighties, ran from Huntington Avenue and Oak Street to Hampden and Woodberry, indicated the end of the horse cars and

the substitution of the trolley car, not only in Baltimore but all over the United States.

Now the street car is encountering the competition of the private automobile. That competition cannot be checked by any means now available. The street railway is still a necessary means of transportation and is the only means of handling passengers in large numbers at present available. But it certainly cannot follow that, because it is faced with a serious risk to its future, the risk itself entitles it to a greater return on the value of its property than are those utilities which have no such risk.

So long as the Company is performing a necessary service it is entitled to be compensated for that service by an amount which will cover its costs, and will yield a fair profit on the use of its property. And the Commission will authorize the Company to collect a rate which will yield that cost and profit, so long as it is reasonable and no more than the Commission feels the service is worth to the public. But the Company cannot depend upon regulation and increasing rates to save it from ultimate disaster, if, because of the automobile, or any other new agency of transportation, its service becomes obsolete, and the use of that service is confined to comparatively few people. The Company has been protected from jitney competition and its rates have heretofore been raised to meet increasing costs of rendering service, but there is a limit beyond which the Commission cannot go in permitting higher rates to meet, not increasing costs of doing business, but failure to earn a sufficient return, due to the falling off of business.

THE PROBLEM OF DEPRECIATION.

Counsel for the Company contend that the property rights of a utility include a return of 100 per cent. of the property used and consumed in the public service and a return on the value of the property used and not yet consumed.

The Commission believes that, like the right to a particular rate of return, the right of a utility to a return of 100 per cent. of the property used and consumed in the

public service, or the value of that property in money, varies with circumstances. These circumstances would naturally include the conditions under which the property was created and developed.

In the case before the Commission we have a transportation system built up of what originally were competing lines. The original company, the Baltimore City Passenger Railway Company, had the choice streets and was prosperous from the beginning. One line after another was established with the primary idea of competing with the original company, or with each other; or if not competing directly, of getting into what in those days was considered a profitable business. One company, the Lake Roland Elevated, was designed and built primarily to aid in the development of Roland Park. Whether a profit was made on the operation of that line or not was incidental; its real purpose was to help sell lots. Rights in streets were acquired indiscriminately and tracks laid without much more than guesses as to whether they ever would pay. Men conceived the idea that a railway in a particular part of the City would pay, raised the money and built it. Such was the case of the old Central Line which ran on Fulton Avenue and Lanvale and Preston Streets to a point near Greenmount Cemetery. Some of these lines never did pay. Lines were built that never would have been considered if a comprehensive system for the whole City was being laid out. Some stretches of these lines have been abandoned from time to time.

Then came the era of rapid transit, still in the competitive stage. The Baltimore Traction Company was formed by the purchase of two lines and a cable system was established. The competition of this company with the Baltimore City Passenger Railway Company was so keen that the Baltimore Street and Madison Avenue lines, from which the bulk of the traffic was being drawn by the new mode of travel, were cabled. This expenditure of millions was for the sole purpose of meeting competition. In the meantime other lines were being electrified. Then the Consolidated Railway Company was formed by a merger of the Traction Company lines and the lines of the Union Passenger Railway Company, known as the Perin lines, more effectively to compete with the Balti-

more City Passenger Railway Company. One after another of the independent lines was absorbed by one or the other of the two competing systems. Then, in 1899, eleven years before regulation of utilities was attempted in Maryland, the two systems were merged, forming the present system of the United Railways and Electric Company of Baltimore.

Throughout all this process much money was wasted, more was spent injudiciously in building parallel lines, and there were duplications of facilities all over the City. In those days, men who built the lines "took a chance." If their guess was a good one, they would get back the value of their property 100 per cent. and a return on that property while it was being used. If their guess was not good, they would lose. To this day no one knows to what extent depreciation was provided for, if it was provided for at all. Each company kept its books as it saw fit, and they showed what the officials of the companies wanted them to show. They were private concerns, organized solely for profit, and how they kept their accounts was nobody's business but their own.

Reference was made in the testimony in this case to a lot of old cars that had been burned up. Many of these were of the old horse car and early trolley types and although no claim was made for their value, the intimation was strong that their retirement should have been provided for through a depreciation allowance. The same suggestion applies to the cable system.

Company's counsel in explaining the exhibit of their witness in setting up a claim for $2,200,000, or about 4 per cent. on the value of the Company's depreciable property, as an annual allowance for depreciation, say:

> "In arriving at this total Mr. Hill noted, but did *not* allow for, several cycles of obsolescence of virtually all the Company's property and system within the last seventy years, including cycles of the horse car, which lasted thirty-two years, and the cable car, which lasted only seven years." (Brief, page 55.)

In view of the history of the Company, the manner in which its property was built up, the haphazard way in which lines were projected and built, and the motives which led to their building, the Commission can see no reason whatever why Mr. Hill should have allowed for such cycles of obsolescence. There was certainly no merit in his not doing so. It might have been proper for the companies making up the present system to provide for the obsolescence and retirement of their property at the time it was being used up, but there is no obligation, legal or moral, upon the street car riders of today to pay for the property involved in those several cycles of obsolescence. In fact, and in view of all the circumstances, it is doubtful if the car riders of an earlier day properly could have been called upon to pay for them. The Commission does not agree with the declaration of counsel (Company brief, page 49) that:

> "The utility is entitled to a return of *all* property *retired* (because of obsolescence, inadequacy, legislative requirement or what not), whether replaced or not, through periodic allowances out of earnings to provide in advance for the retirements,—certain to occur at an uncertain time."

As heretofore stated, it feels that the right here claimed varies with circumstances.

In the valuation case, the Commission found that the Company's depreciable property, as of December 31, 1923, was in approximately 85 per cent. condition. The Commission feels that the Company is entitled to have that particular property maintained in that per cent. condition, but that it is not entitled to rates which, through a depreciation account, will enable it to restore that property to 100 per cent. condition. If it desires to restore it to 100 per cent. condition, it may do so out of surplus and, of course, earn a return on the 15 per cent. restored. It may no more make up its past losses in property than it may make up its past losses in revenue due to insufficient rates.

PROVIDING FOR REMOTE CONTINGENCIES

In making an allowance for depreciation the Commission will endeavor to provide a fund out of which

retirements may be met as they occur, and also to create a reserve out of which ordinary obsolescence may be cared for. This will be conservative, because the Commission does not feel that car riders of today ought to provide for remote contingencies, involving unusual amounts, which, if they do occur, can be at least shared by the car riders of a future day. We do not feel that a depreciation account or reserve ought to be regarded as an insurance against possible contingencies, but should provide for the current and gradual consumption of the property from causes which are ascertainable.

The city of Chicago, in a brief submitted to the Interstate Commerce Commission in Case 15100 (118 I. C. C. 295), concerning depreciation charges of steam railroad companies and quoted with approval by that Commission, says of obsoloscence that there is "a kind of obsolescence which accompanies the normal progress of an art and which gradually, as years go on, destroys the value of property," but there is another kind "which springs up over night, unforeseen and abrupt, and terminates the life of property."

The Interstate Commerce Commission, in its report (118 I. C. C. 295), says:

> "The first kind of obsolescense, presently at work, is a factor of depreciation. The second kind is a mere contingency which may never occur. * * * According to the city (Chicago), contingences should be provided for by surplus reserves, or by insurance, or by amortizing the loss sustained over a reasonable period in the future. The latter process is particularly appropriate when property retired is replaced by a more efficient and economical substitute. * * *
>
> "It seems to us that the distinction which the city of Chicago draws between depreciation charges and insurance is valid. The function of the former is to account currently for the consumption or exhaustion of a service life of property from causes which are known to be in operation and the effect of which can be forecast with reasonable accuracy. The function of insurance, on the other hand, is to

afford protection against possible contingencies which cannot be foreseen and which may or may not ever occur."

Earlier in its report the Commission said:

"* * * depreciation accounting attempts only to place the burden of current losses in service value upon the current users of the property, which obviously is logical. * * * We are not here dealing with competitive industries, but with monopalistic or semi-monopolistic industries where public regulation is needed to protect the public interest. The choice is between permitting such an industry to charge rates which will enable it to make its depreciation charge rates which will enable it to make its depreciation charges large enough to meet every conceivable contingency, and holding its depreciation charges down to a more moderate basis, but permitting the industry, in the case of some sudden and unexpected development, to spread the cost of retirements over a period in the future. In our opinion the later course is the preferable one."

The Commission also declared:

"It is a mistake to assume that inventions or improvements in the art invariably, or even as a general rule, have a sudden effect upon an industry. Their effect is often quite gradual, in view of the necessity for a period of experimentation, development and preparation for manufacture on a large scale. Past experience also furnishes some gauge of the probable effect of progress in the art."

In view of the decision of the Supreme Court in the case of Board of Public Utility Commissioners (N. J.) v. New York Telephone Co. (271 U. S. 23) this Commission would hesitate to allow any large depreciation reserve to be built up to provide for contingencies that may never occur. The public cannot be expected to take all the risks of this or any other utility business.

BASIS FOR DEPRECIATION CHARGES

The Commission believes that it might be more logical to base the annual allowance for depreciation upon the

cost of depreciable property, rather than upon gross revenues. The relation between gross revenues and depreciation is remote and indirect while there is a direct relation between the cost of a piece of property and the amount that ought to be set aside for its consumption by use.

However, the allowance which this Commission has made for depreciation, 5 per cent. of the gross revenues, has provided fairly well for current depreciation and retirements and has permitted the accumulation of a reserve, amounting to $1,413,793 on August 31, 1927. This percentage of gross revenues for depreciation has been set up by the Company since 1912, and in that time it had amounted to $10,537,960. If the Company had set up this amount of 5 per cent. of its gross revenues from the time of consolidation in 1899, which it had a perfect right to do, it would have yielded $14,427,566, which would have provided for current depreciation and retirements and would have left in the reserve $1,895,963 for accrued depreciation. (People's Council Exhibit No. 42, sheet 3.)

The Company now claims that an amount equal to 4 per cent. of the value of its depreciable property should be set up, which would yield approximately $2,200,000 a year. People's Counsel Exhibit No. 42, sheet 4, shows that if this plan had been followed since 1899, the year of the consolidation, it would have amounted to $44,628,233. Retirements, in that period, as shown by People's Counsel Exhibit No. 42, sheet 3, were $12,531,603, which would have left the sum of $32,096,630 in the reserve.

In spite of the heat with which Company's counsel attack this latter showing, the Commission feels that it is illuminating. It is purely hypothetical, of course, and there are not sufficient data completely to prove its assumptions. But we do know the value of the Company's depreciable property from January 1, 1924, to January 1, 1927, and the actual retirements in that period. On the basis of these actual figures for the three years, the Company's theory of 4 per cent. on the value of depreciable property projected 10 years in the future, gives these illuminating figures:

ESTIMATED DEPRECITTION RESERVE BASED ON 4% OF DEPRECIABLE PROPERTY.

Year	Additions	Retirements	Amount of Depreciable Property at end of year.	Average Depreciable Property.	Depreciation at 4%	Accumulated Reserve.
Valuation as of December 31, 1923.....			$54,000,702	.....	.....	
1924.....	$1,635,284	$802,771	$54,833,215	$54,416,958	$2,176,678	$1,373,907
1925.....	1,399,663	1,085,565	55,147,313	54,990,264	2,199,611	2,487,953
1926.....	828,609	969,950	55,005,972	55,076,642	2,203,068	3,721,071
Total at Dec. 31, 1926.....	$3,863,556	$2,858,286	$55,005,972	.....	$6,579,357	$3,721,071
1927.....	1,287,852*	952,762*	55,341,062	55,173,517	2,206,941	4,975,250
1928.....	1,287,852	952,762	55,676,152	55,508,607	2,220,344	6,242,832
1929.....	1,287,852	952,762	56,011,242	55,843,697	2,233,748	7,523,818
1930.....	1,287,852	952,762	56,346,332	56,178,787	2,247,152	8,818,208
1931.....	1,287,852	952,762	56,681,422	56,513,877	2,260,555	10,126,001
1932.....	1,287,852	952,762	57,016,512	56,848,967	2,273,959	11,447,198
1933.....	1,287,852	952,762	57,351,602	57,184,057	2,287,360	12,781,796
1934.....	1,278,852	952,762	57,686,692	57,519,147	2,300,766	14,129,800
1935.....	1,287,852	952,762	58,021,782	57,854,237	2,314,169	15,491,207
1936.....	1,287,852	952,762	58,356,872	58,189,327	2,327,573	16,866,018
Total at Dec. 31, 1936.....	$16,742,076	$12,385,906	$58,356,872	.....	$29,251,924	$16,866,018

*Estimated on average of 1924, 1925 and 1926.

At the outset, the amount set aside for depreciation during the years 1924, 1925 and 1926 would have amounted to $6,579,357, of which amout $2,858,286 would have been required for the actual retirements of property at valuation prices. This would leave $3,721,071 in reserve.

Projecting these figures ten years into the future and allowing annual retirements at the average for the three years, 1924 to 1926 inclusive, or $952,762, would produce a total of $22,672,567 set aside for depreciation, of which $9,527,620 would have been used for retirements, leaving in the reserve $16,866,018. This would be enough to retire practically the entire rolling stock equipment of the Company.

These figures are illustrative only. It might happen that the annual retirements for the next ten years would greatly exceed the average of retirements for the three years, 1924 to 1926, inclusive. But even if these retirements were doubled, the Company still would have a reserve of $7,338,398.

DEPRECIATION AND MAINTENANCE.

On this showing, the Commission feels that the amount for depreciation claimed by the Company is too high. As already stated, the percentage of its gross revenues set aside has provided reasonably well for its current depreciation and retirements. Moreover, there is a broad twilight zone between depreciation and maintenance, and it may well be (and without any impropriety) that the maintenance account has been used to a certain extent to provide for depreciation. Indeed, some commissions and corporations combine the depreciation and maintenance accounts. The allowance for this joint account for electric railways runs usually from 14 to 17 per cent. of gross revenues. For example, the surface lines of the Interborough Rapid Transit Company of New York are allowed 14 per cent., of which maintenance takes up 12 per cent., while for the subways, which are extremely expensive to maintain, 17 per cent. is allowed for the joint account. Of this, 12 per cent. is allowed for maintenance, but the excess of actual maintenance expenditures over

this allowance is charged to the depreciation reserve. For 1927 the United Railways was allowed approximately 16 per cent. for maintenance and depreciation, of which approximately 11 per cent. was for maintenance and 5 per cent. for depreciation. These two accounts yielded in 1927 a total of $2,589,736. It is generally recognized that the property of the Railways Company is well maintained.

Any increase in the gross revenues resulting from an increase in fares would increase the amounts that would be set aside for depreciation and maintenance. On the basis of the several rates of fare heretofore mentioned, the amounts to be set aside for depreciation during 1928 on the 5 per cent. gross revenue basis, allowing for a 2 per cent. decrease in riding, would be as follows:

Rate of Fare	Amount for Depreciation
8c straight	$843,955
9c cash, 5 for 40c	851,585
9c cash, 3 for 25c	883,544
10c cash, 3 for 25c	887,134
10c straight	1,046,929

People's Counsel's Exhibit No. 42, sheet 2, shows that the average annual retirements from 1912 to 1927 have amounted to $555,664.90.

Therefore, the Commission at this time will not make any change in the method of computing the allowance for depreciation, but will continue it at 5 per cent. of gross revenue.

VALUE ON WHICH RETURN IS COMPUTED.

In Case No. 533, decided February 1, 1928, the Commission fixed the value of the Company's property at $75,000,000 as of December 31, 1923, of which sum $5,000,000 was for easements. The Company claimed that, subsequent to the date of the valuation, net additions had been made which would add $1,005,270 to the above value. People's Counsel, questioning the amount of increased value claimed by the Company, attacked the bookkeeping methods of accounting for additions where old trackwork is replaced and declared that the $1,005,270 should

be nearer $200,000. His witnesses also pointed out that a decrease in construction costs had taken place between 1923 and 1927 and that this factor, if given the same weight as was given the cost of reproduction by the Commission in fixing its value, would tend to indicate a decrease rather than an increase in the 1923 value. After considering all facts which to it seem relevant, and particularly as the relatively small amount in dispute might easily be offset by a slight fluctuation in price levels, the Commission is of the opinion that the proper value to be used, at the present time, as a test of the reasonableness of the rates to be fixed in this proceeding, is $75,000,000.

THE SITUATION AS TO HALETHORPE.

Application was made to the Commission by counsel for the communities of Halethorpe, Arbutus and Leeds, for an order extending the single fare zone to Halethorpe, on the ground that the present requirement of two fares on the Halethorpe line is an unreasonable discrimination against the patrons of that line, and that such discrimination is contrary to the provisions of the Public Service Commission Law.

In their brief, filed in the emergency rate case, they said:

> "There are twelve lines of the United Railways & Electric Company extending to and into the suburbs of Baltimore County. The Halethorpe line is the shortest of them all from the center of the City of Baltimore. The first fare zone of the Halethorpe line is the shortest of them all. The first fare zone of three of the lines is just slightly shorter than the total two fare zone of the Halethorpe line and materially longer than the first fare zone of the Halethorpe line. The first fare zone of the other eight lines is longer than the total two fare Halethorpe line. The first fare zone of five of the latter eight lines extends a substantial distance beyond the Baltimore City line and into Baltimore County. Four of the latter eight lines have no second fare zone whatever and three of them extend into Baltimore County. The cost of service, therefore to the ap-

plicant on the whole two fares on the Halethorpe line is materially less than the cost on the one fare zone of eight of the other suburban lines and slightly more than on the first fare zone of the other three lines, but very materially less than the two fare zones on the said three remaining lines.

"The above facts show clearly an undue discrimination against the communities of Halethorpe, Arbutus and Leeds and an undue and unreasonable preference in favor of all the other suburban lines of Baltimore City being eleven in number."

Counsel also cited an opinion of the United States Supreme Court, in the case of the Portland Railway, Light & Power Company v. Railroad Commission of Oregon (229 U. S. 397), which affirmed the action of the Supreme Court of Oregon in a ruling to the effect that the charging of two fares to one community and one fare to another, when the costs of service to the two communities were substantially the same, and both communities were practically the same distance from the center of the city of Portland, was an unlawful discrimination. They also cited Sections 362, 365, 369 and 373 of Article 23 of Bagby's Annotated Code of Maryland to indicate that Halethorpe, Arbutus and Leeds were being unreasonably discriminated against.

They further cited the opinion of the Commission in the seven and one-half cent fare case, filed May 26, 1924, as recognizing "an unlawful locality discrimination upon facts analogous in every particular to Halethorpe in this case," and the action of the Commission in extending the single fare zone as remedying that discrimination.

In that opinion the Commission said:

"The residents of the eastern and southeastern sections of the City at present can ride only three miles from the center of the City for one fare, while in practically all other sections it is possible to ride from five to eight miles within one fare zones."

To that extent the Commission, in that case, did recognize the *length* of the ride from the center of the City as some measure at least, of its value. It does not feel,

however, that this rule can be applied in all cases, but that conditions, other than length of ride, may be controlling.

It is a fact, however, that the Legislature, in the Annexation Act of 1918, did draw the new southwestern boundary line of the City much closer to the old city than it did in other sections, with the result that the car riders in the southwestern section of the City get a much shorter ride for their single fare than do the people of any other section. The Commission does not feel that the legislative discrimination against that territory lying to the southwest of the old city boundary ought to deprive the people of that territory of as great a measure of railway service for their single car fare as is received by those more fortunately situated with relation to the City.

While it is true that the purpose of the Commission in extending fare zones in previous cases was to extend them only to the new city limits, and to make the city line the limit of the single fare zone, it recognizes the fact that in some cases those zones were extended substantial distances beyond the city boundary. In most cases these extensions were made to meet special conditions, and the Commission did not, and does not now, consider them precedents for general extensions of single fare zones beyond the city limits. It is impossible to lay down any exact measure of distance for a single fare.

The Commission feels, after considering all the elements of the situation, that the case of Halethorpe justifies a departure from the general rule under which the first fare zone is limited to the City boundary. It is true that the people in the southwestern section of the City *may* travel as far as the residents of any other section *within* the city boundaries. But as a matter of fact the greater number of them have no reason to travel much, if any, distance beyond the business section of the City, which center is, approximately, at Baltimore and Charles Streets. From that point the airline distance to the southwestern city boundary is only a fraction more than three miles, making it the shortest single fare zone on any of the suburban lines of the Company, while the second fare zone in which Halethorpe, Leeds and Ar-

butus are located is only 1.87 miles. The total distance from the center of the City that may be traveled on the Halethorpe line is a fraction more than five miles, while the single fare zones on nine other lines extending into the suburbs are longer than the two zones to Halethorpe. As pointed out by counsel, the first fare zones of six of these nine lines extend a substantial distance beyond the Baltimore City limits. Five of them have no second fare zones whatever.

The Commission feels that this situation has considerable weight in determining the fare zones on the Halethorpe line, and that if the distance is to be considered at all in fixing a single fare zone, that distance ought to be approximately five miles from the center of the City. That would put Halethorpe in the single fare zone class and put it on a parity with other single fare zones. It would also remove any complaint of discrimination.

The Commission will therefore direct that the single fare zone be extended to the village of Halethorpe.

THE WEEKLY PASS.

Mr. Clark, counsel for the People's Committee, contended very vigorously for the establishment over the system of the Company of the weekly pass and Sunday pass, which have been tried in other cities as a means of increasing revenues. In its opinion in the original valuation case, No. 533, filed March 9, 1926, the Commission said:

> "As to the weekly pass proposition, this Commission feels it would be unwise to require the Railways Company to embark on such an experiment. Proponents of the weekly pass idea testified that it was 'a gamble,' that there was no way of checking the results of the pass upon the revenues of those companies in other cities (which had adopted it), but their general impression was that it had been helpful.
>
> "In view of the testimony submitted, this Commission does not feel justified in requiring the Company to issue such a pass or ticket, and it would hesitate to approve such a plan if it were proposed

by the Company, on the ground that it would be a marked departure from the plan of measured service, under which the patron of a utility pays for what he receives, and toward the plan of unlimited service for a fixed charge, or flat rate."

In the nearly two years which have elapsed since that was written, the Commission has not been shown that the weekly pass has had a beneficial effect upon the revenues of any company which adopted it. Nor has it been shown that there is any manner of determining or checking *any* effect it has on revenues. Therefore, the Commission sees no reason for changing its position on the subject.

COLLATERAL MATTERS.

Several cases dealing with matters of service were taken up by the Commission for public hearing in connection with the rate case, and were heard on November 28, 1927.

The Merchants Association of Northeast Baltimore, represented by Mr. John W. Gray, requested that the Commission require the Company to issue and receive identification checks to and from Chester Street bus line, good for a continuous ride through the first fare zone; that a more frequent service be maintained; and that the bus line be extended to Harford Road and North Avenue, thus giving passengers the benefit of transfers with the Harford Road line and both branches of the No. 13 line.

The Chester Street bus line was established by order of the Commission in the 1924 rate case (Case No. 1682). The purpose in having the line established was to afford a quick and easy means for the people of Northeast Baltimore to reach their places of employment in Highlandtown and Canton without the necessity of coming toward the center of the City, transferring, and going back again. It was not contemplated that this line should take care of the travel originating north of North Avenue on the Harford Road line. If the request of the Merchants Association of Northeast Baltimore should be granted the effect would be that the busses of the Chester Street line would receive capacity loads at or near their terminal and before they entered the territory they were actually

intended to serve. That would defeat the very purpose for which the bus line was established. The request is therefore denied.

A number of petitioners, represented by Mr. Harry M. Berman, requested the establishment by the Company of bus service on O'Donnell Street between 15th Street and Carnegie Avenue, a distance of about one and one-half miles. The evidence submitted by the Company showed that there were 31 houses in the area to be served, and that a considerable portion of the territory adjacent to O'Donnell Street is occupied by cemeteries. Mr. Berman, in his presentation of his case, said:

> "It may be true that it would not justify the car company to run these busses, but the people have to walk, that's the gist of the proposition."

The superintendent of bus transportation for the Railways Company testified that it would cost $13,500 a year to establish service with one bus and that with a fare of ten cents, the estimated revenues would be $8.00 a day, or $2,920 a year, so that the service would be operated at a loss of more than $10,000 a year.

In view of the situation as outlined by Mr. Berman and by the Company's witness, the Commission feels it would not be justified in ordering the establishment of service requested by Mr. Berman's clients.

The Morrell Park Improvement Association and the Lansdowne Improvement Association, represented respectively by Messrs. William H. Lawrence and Lester L. Barrett, requested an order requiring the Company to issue free transfers to and from the No. 27 car line and the Lansdowne bus.

The car line ends at Morrell Park. The bus line, although a subsidiary of the United Railways Company, is not a part of the railway system. In the rate case before the Commission, the expenses and the revenues of The Baltimore Coach Company, which owns the Lansdowne bus line, were not considered. The bus line was bought by the Coach Company from a private operator for the purpose of serving Lansdowne and with the hope of making that service profitable. It was never intended to operate it as a part of the railway system.

The testimony shows that the bus line is now being operated without profit, and to compel the Railways Company to issue free transfers to and from the bus line would, in effect, be requiring the Company to give service over a line, not a part of its system, for nothing. The Commission does not regard that as reasonable. It cannot see its way clear to issue such an order.

THE RATE OF FARE.

From the foregoing tables showing the various rates of return which will be yielded by fares ranging from eight cents flat to ten cents flat, it will be seen that allowing for a 2 per cent. decrease in riding, a flat eight cent fare would yield only 5.48 per cent. return on the value of the Company's property, on the Commission's basis of calculation, and a cash fare of nine cents with five tokens for forty cents would yield only 5.64 per cent., which returns hardly seem adequate. The next lowest practicable rate of fare that could be fixed is eight and one-third cents, which would of necessity be a token fare on the basis of three fare tokens for twenty-five cents. That would necessitate the car rider paying nine cents for a single ride if he pays in cash. At the present time 96.4 per cent. of the full fare passengers use tokens, while only 3.6 per cent. pay cash. On this basis, and allowing for a 2 per cent. falling off in riding, the rate of return would be 6.31 per cent.

As the inclusion of Halethorpe in the single fare zone is estimated to result in a decrease of $40,000 a year in revenues, this would reduce the rate of return to 6.26 per cent. If riding should fall off any further this rate of return would be further decreased.

The Commission believes that this rate of fare will be fair to the public and will yield a fair rate of return to the Company, making due allowance for possible decrease in riding. This conclusion, in so far as the Company is concerned, is supported by the fact that few, if any, street railway companies are earning more than the rate of return which it is estimated will be produced by this fare.

The Commission will therefore deny the Company's application for a ten cent flat fare and will fix a rate of fare at eight and one-third cents on a token basis or nine

cents cash. There will be no change ordered in the commutation, school, or other special classes of fares except in the half fare for children, which will be made five cents.

A table showing the estimated revenues and expenditures of the Company under the new rate of fare is given herewith.

ESTIMATED RETURN FOR 1928.
9c Cash Fare—3 Tokens for 25c—½ Fare 5c.
No Change in Other Classes.
Estimated 2% Falling Off in Full Fares.

		No. of Passengers	Revenues
Cash Fare	@ 9c.....	7,180,730	$ 646,266
Token Fare	8 1-3c...	191,753,540	15,979,461
Total Full Fares		198,934,270	$16,625,727
1st County Zone	4½c....	2,600,000	117,000
2nd " "	5c.....	270,000	13,500
3rd " "	5c.....	45,000	2,250
Bethlehem Steel Tickets	5c.....	1,600,000	80,000
Miscellaneous	.....	8,000	400
Half Fares	5c.....	8,080,000	404,000
School	5c.....	3,860,000	193,000
Total		215,397,270	$17,435,877
Other Revenue			235,000
Total Operating Revenue			$17,670,877
Operating Expenses		$10,303,944	
Depreciation		883,544	
Taxes			
Property, etc.		487,110	
Park Tax		1,168,204	
Income Tax		138,469	12,981,271
Operating Income			$ 4,689,606
Non Operating Income			171,000
Gross Income			$ 4,860,606
Deductions from Gross Income			3,445,000
Net Income			$ 1,415,606
Amount Available for Return			$ 4,731,606
Per cent. of Return on Base of $75,000,000.00			6.31%
Deduct $40,000 from Gross Revenues for Halethorpe Zone extension, giving a rate of return of			6.26%

Complaint has been made of the service which the Company has been giving in the last several months, and officials of the Company have frankly admitted that service has been cut to meet the falling off in revenues due to a loss of traffic. With the increased fares herein allowed, the Commission will expect the service to be improved forthwith, the headway between the cars decreased, and other improvements necessary properly to serve the public brought about as rapidly as possible.

An order will be passed in accordance with the conclusions herein.

ORDER NO. 12639.

Before the Public Service Commission of Maryland.

In the Matter of the Application of the United Railways and Electric Company of Baltimore for the Establishment of a Permanent Rate of Fare of 10 Cents and for the Establishment of a Temporary Emergency Rate of Fare Pending the Establishment of Such Permanent Rate of Fare.

CASE NO. 2648.

The above entitled case having been duly heard and submitted and full investigation of the matters and things involved having been had and the Commission, on the date hereof, having rendered and filed an opinion containing its findings of fact and conclusions therein, which said opinion is hereby referred to and made part hereof,

It is, therefore, this 10th day of February, in the year Nineteen Hundred and Twenty-eight, by the Public Service Commission of Maryland,

Ordered: (1) That the application of The United Railways and Electric Company of Baltimore filed herein

on August 1st, 1927, for the establishment of a flat fare of ten cents cash be and it is hereby denied.

(2) That from and after midnight of February 12th, 1928, and until the further order of the Commission, The United Railways and Electric Company of Baltimore shall be permitted to charge and collect for the transportation of persons over its several street railway lines, in Baltimore City and vicinity, a base rate fare of eight and one-third cents when tickets or fare checks are purchased, or nine cents cash, for the conveyance of each passenger over twelve years of age, and five cents for each child between the ages of four and twelve years, between any of the points designated in the schedule of the said Company filed with the Commission pursuant to the requirements of the Commission's Order No. 8240 entered in Case No. 1682 on May 26th, 1924, or between intermediate points, in either direction, on any of such lines, except in so far as the zones on any of the said lines are hereinafter modified or changed.

(3) That the first fare zone on the Halethorpe line be and it is hereby extended to the terminus of the said line at Halethorpe, effective from and after midnight of February 12th, 1928.

(4) That during the period this Order is in effect The United Railways and Electric Company of Baltimore shall sell on its cars and at its offices and waiting rooms tickets or fare checks which shall be honored for passage on its cars, at the rate of eight and one-third cents each, which said tickets or fare checks shall be sold on the cars in quantities of three (or more, in the option of the company), and should the conductor of a car at any time be unable for any reason to sell a passenger desiring to purchase them at least three tickets or fare checks, then such passenger shall be required to pay but eight cents fare.

(5) That except as hereinbefore changed, the present rates, fares and charges of The United Railways and Electric Company of Baltimore be and they are hereby continued in effect for the period of this Order.

(6) That this Order shall be effective from and after midnight of February 12th, 1928, and until the further order of the Commission.

(7) That The United Railways and Electric Company of Baltimore shall furnish to this Commission accurate and complete statements under oath, and in convenient form, setting forth the number of revenue and transfer passengers carried, and the number of car miles operated, the cash receipts from operation and other sources, and the operating and other expenditures of the Company, all set forth in the manner prescribed by the rules of this Commission for accounting by street railway companies, so soon as may be reasonably practicable and convenient after the end of each calendar month during the period this Order remains effective, and in no event later than the last day of the next succeeding calendar month, covering the operations of the Company during the next preceding month.

(8) That the right of The United Railways and Electric Company of Baltimore to charge and collect the fares in this Order prescribed shall be held subject at all times during the period the said Order remains in effect to the right and power of this Commission to reopen this case in the light of the facts disclosed by the monthly reports aforesaid, or of other facts otherwise coming to the attention of this Commmission, and modify the rates of fare by this Order authorized to be charged and collected by the Company.

And It Is Further Ordered: That a copy of this Order and a copy of the opinion hereinbefore referred to and filed herewith be forthwith served upon the said The United Railways and Electric Company of Baltimore, and that the said Company, within ten days from the date of the service of such copy, advise this Commissionin writing whether or not it will accept and abide by the same.

HAROLD E. WEST,

J. FRANK HARPER,

STEUART PURCELL,

Commissioners.

(3)

ANSWER TO BILL OF COMPLAINT.

(Filed March 30, 1928.)

In the Circuit Court No. 2 of Baltimore City.

The United Railways and Electric Company of Baltimore

vs.

Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, Members, Constituting the Public Service Commission of Maryland.

ANSWER OF THE PUBLIC SERVICE COMMISSION OF MARYLAND.

To the Honorable the Judge of said Court:

The answer of Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, members, constituting the Public Service Commission of Maryland (hereinafter referred to as the Commission), to the Bill of Complaint of The United Railways and Electric Company of Baltimore (hereinafter referred to as the Company), filed against said Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, Members, constituting the Public Service Commission of Maryland, respectfully shows:

(1) The allegations of paragraph 1 of the Bill are admitted.

(2) The allegations of paragraph 2 of the Bill are admitted.

(3) The allegations of paragraph 3 of the Bill are admitted.

(4) The allegations of paragraph 4 of the Bill are admitted.

(5) The allegations of paragraph 5 of the Bill are admitted.

(6) It is admitted that the Commission found (1) that the present fair value of the Company's property used in the public service is $75,000,000 (2) that the annual return that can be reasonably be expected by the Company from the rates fixed by the said Order is $4,691,606, and (3) amounts to a return of 6.26 per cent. on a fair value of the Company's property. The remaining allegations of said 6th paragraph of the Bill are denied.

(7) Answering such allegations of fact, as distinguished from inferences of fact, as are contained in the 7th paragraph of said Bill, the Commission says: That the issues of fact presented by the Company's application as of August 1st, 1927, and those arising in the course of the hearings had thereon and decided in the Commission's Opinion or Order, were not few but many. The Commission admits that the fair value of the Company's property had been exhaustively investigated by the Commission in the Valuation Case under Section 30 of the Public Service Commission Law, and that a valuation had been finally ascertained as of December 31st, 1923, of $77,000,000, including a valuation of the easements of the Company in the amount of $7,000,000.

A bill having been filed by the then People's Counsel to set aside the Order of the Commission fixing this valuation as unlawful and unreasonable, by reason of the inclusion of an allowance for the value of easements, the Circuit Court of Baltimore City sustained the Order of the Commission. On appeal to the Court of Appeals that Court neither affirmed nor reversed the decree below, but remanded the case for further proceedings to determin the value to be allowed for easements, in view of the fact that the method theretofore followed by the Commission in their evaluation had reflected, as the Court of Appeals found, the earning power of the easements.

This question of the value of easements was reheard by the Commission and decided by it in an Opinion filed and Order No. 12630, of which the Opinion was made a part, passed on February 1st, 1928, the total value of the property of the Company as of December 31, 1923, being found as $75,000,000, which was the result of the re-

duction of the allowance made for easements from $7,000,00 to $5,000,000. The entire record in said Valuation Case was offered in evidence at the hearings on the Company's application of August 1st, 1927.

The Commission further admits that in four previous rate cases before the Commission between 1918 and 1924, questions as to the Company's operations, revenues, expenses and so forth had been exhaustively investigated and the facts fully ascertained by the Commission, and that it has been kept informed as to such matters by periodic reports filed with it by the Company pursuant to Orders of the Comimssion in these various rate cases. The Commission further avers that while in the Valuation Case and in some of the Company's rate cases, the Company introduced evidence as to the fair rate of return which it should be allowed, this question was neither relevant nor material to the proceedings then involved, as the question was not before the Commission for determination.

(8) Answering the allegations of the 8th paragraph of the Bill, the Commission denies the same, and further answering the allegations of said paragraph the Commission specifically avers:

(a) The maximum rates of fare which by said Orders the Company is now permitted to charge and collect, are adequate to provide for the necessary expenses of its public service and for the consumption of its property employed in such service and are adequate to yield a fair return upon the fair value of its property so employed.

(b) The percentage which the Commission found would be the rate of return upon the fair value of the Company's property yielded by the fares established by said Order was adopted by the Commission upon considerations bearing a true relation to the fairness of a return under the facts and circumstances and is an adequate rate of return to compensate the Company for the use of its property in the public service.

(c) The amount which the Commission determined would be a proper annual allowance out of earnings to provide for depreciation and retirement of the Com-

pany's property used in the public service, is reasonable and adequate for that purpose and was fixed by the Commission upon a fair and proper basis.

(d) Proper allowance was made in determining the present value of the Company's property upon which the rate of return from the rates established must be calculated, for the changes in value of its property since January 1st, 1924, and for additions and retirements since said date.

(e) The Commission lawfully and properly required the Company to abolish the second fare upon its Halethorpe line.

(9) The Commission denies the allegations of the 9th paragraph of the Bill.

(10) The Commission denies the allegations of the 10th paragraph of the Bill.

Wherefore, having fully answered said Bill of Complaint, these defendants pray that the Bill may be dismissed with costs.

THOMAS J. TINGLEY,

RAYMOND S. WILLIAMS,

Special Counsel to the Public Service Commission of Maryland.

CARVILLE D. BENSON,

JAMES K. CULLEN,

Counsel for the Communities and Citizens of Halethorpe, Arbutus and Leeds.

HAROLD E. WEST,

Chairman of the Public Service Commission of Maryland.

State of Maryland, City of Baltimore, To Wit:

I hereby certify that on this 30th day of March, Nineteen Hundred and Twenty-eight, before me the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore aforesaid, personally appeared Harold E. West, Chairman of the Public Service Commission of Maryland, and made oath in due form of law that the matters and facts set forth in the aforegoing Answer are true to the best of his knowledge, information and belief.

Witness my hand and notarial seal.

EVELYN M. WYNIGER,

(Seal.) Notary Public.

My Commission expires May 6, 1929.

(4)

OPINION.

Filed May 10, 1928.

In the Circuit Court No. 2 of Baltimore City.

The United Railways and Electric Company of Baltimore
vs.
Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, Members, Constituting the Public Service Commission of Maryland.

Henry H. Waters, Venable, Baetjer & Howard, Haman, Cook, Chesnut & Markell and Joseph C. France for United Railways & Electric Company.

Thomas J. Tingley and Raymond S. Williams for Public Service Commission.

Carville D. Benson and James K. Cullen for people of Halethorpe.

Linwood L. Clark for People's Corporation.

William A. Toole for State Committee of The Socialist Party of Maryland.

OPINION.

ULMAN, J.—

Four questions are presented for judicial review in this case, viz.:

I.—The Commission's order limits company rates to yield 6.26 per cent. on value of company's property. Is this unreasonable and/or confiscatory?

II.—Commission's order permits the company $883,544 as an annual allowance to provide for depreciation and retirement of company's property. Company claims that a proper annual allowance for such purposes would be $2,200,000. Is the action of the Commission in this respect unlawful?

III.—In determining the present value of company's property to be $75,000,000 the Commission made no allowance for net additions since its valuation as of January 1, 1924. Was this action of the Commission unlawful!

IV.—Was the order of the Commission in abolishing the second fare to Halethorpe unlawful?

Jurisdiction of This Court and Its Powers of Review.

The parties to this proceeding seem to be in substantial accord as to the scope of judicial power in this proceeding. "The power of the Commission to fix reasonable rates is legislative, the functions of the Court in reviewing the actions of the Commission are distinctly judicial and are exercised only for the purpose of determining whether such actions of the Commission is unreasonable or unlawful." "Under an application to the Court for an injunction restraining the exercising of an order of the Commission, the Court has no authority to determine what would be a reasonable rate for the service required, or to establish rates, but its power is limited to the determination of the question whether the rates fixed by the Commission are unreasonable or unlawful, and until it is made to appear by clear and satisfactory evidence that the action of the Commission is unreasonable or unlawful, the Court is without power to impose any restriction upon the execution of the Commission's order." The order of the Commission "is a legislative mandate which is reinforced by the fact that the Commission is a tribunal erected by law, informed by experience and assisted by a trained corps of subordinates."

Public Service Commission vs. Northern Central R. R., 122 Md. 355; Havre de Grace Bridge Company vs. Public Service Commission, 123 Md. 16; West vs. Byron, 153 Md., —, 138 Atlantic Rep. 404.

In spite of the vast number of judicial opinions which have been handed down since 1898, the fundamental rule in rate cases as expressed by the Supreme Court of the United States in that year in the case of Smyth vs. Ames, 169 U. S. 466, has never been changed. It is that "What

the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience." • • • And that "What the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered • • • are reasonably worth."

Introduction to Consideration of the Four Questions Involved in This Case.

Questions I and II above are so inextricably bound together that logical treatment demands that Question II be considered first.

If company is entitled to set apart any portion of its earnings for the creation of a depreciation reserve, it necessarily follows that the amount of such earnings remaining as return on value will be greater or less as the amount so set apart for depreciation reserve is less or greater. To illustrate, company claims the right to set apart for depreciation reserve $2,200,000 per annum. Commission has determined that a reasonable allowance for depreciation reserve is $883,544. The difference between these two sums, $1,316,456, amounts to 1.75 per cent. on the value of company's property or rate base. Commission has decided that company is entitled to earn 6.26 per cent. on said rate base; and has calculated that company will do so by charging the fares fixed by Commission. But that calculation includes the aforesaid allowance of $883,544 for depreciation. If, for that figure, there should be substituted company's claim of $2,200,000 the percentage of return on rate base be 6.26 per cent. minus 1.75 per cent., or 4.51 per cent. See opinion of Commission, page 37. On the other hand, company, in its Exhibit No. 24, shows that a ten cent fare would yield a return at the rate of 7.44 per cent. on said rate base. But that computation includes an allowance of $2,200,000 for depreciation. Manifestly, if there should be substituted Commission's depreciation figure of $883,544 the resultant return would be 7.44 per cent. plus 1.75 per cent., or 9.19 per cent.

Therefore, before it is possible to determine what percentage of return will result from any given rate of

fare, it is necessary to decide the amount of a legally proper depreciation reserve.

QUESTION II.

Was the Action of Commission In Fixing Depreciation Reserve at $833,544 *Lawful?*

A.

It is conceded that the setting aside of a proper amount for depreciation reserve is not only the right of the company, but that, in the case of a public service corporation at least, it is its duty to its bond and stockholders and to the public.
Knoxville vs. Water Co., 212 U. S. 1, 13-14.

(1) *Should the amount of depreciation reserve be based upon the value of company's property or upon its cost?*

"If the rate base is present fair value, then the depreciation base as to depreciable property is the same thing. There is no principle to sustain a holding that a utility may earn on the present fair value of its property devoted to public service, but that it must accept and the public must pay depreciation on book cost or investment cost, regardless of fair value."

Michigan Public Utility Commission vs. Michigan State Tel. Co. 228 Michigan 653; Minnesota Rate Case, 230 U. S. 352, 454; Brush Electric Co. vs. Galveston, 262 U. S. 443, 445; Georgia Railway vs. Railroad Commission, 262 U. S. 625-633.

It is urged by counsel for Commission that while the language used in the Federal cases above cited may justify the conclusion reached, the precise point now under consideration was not passed upon in those cases. A careful reading of these cases gives some force to that argument. Against it, however, are not only the Michigan case cited, but at least three other cases (one from the highest Court in Kansas) which counsel for Commission have, with commendable frankness, cited on page 81 of their brief. Moreover, the rule as stated, commends itself to reason. We have already seen how

intimately blended are rate of return and depreciation reserve. In the instant case, shifting from Commission's allowance to company's claim as to depreciation allowance makes a difference of 1.75 per cent. in rate of return. To this Court it seems inevitable that the same measuring rod, viz., present value of property, should be used as the base for the determination of both of these intimately related and inter-dependent results. In reaching this conclusion the Court is not unmindful of the contrary opinion of the Interstate Commerce Commission in cases No. 14700 and No. 15100 dealing with depreciation charges of telephone and steam railway companies, decided November, 1926. The opinion of the Interstate Commerce Commission in these cases does proceed upon the accounting theory that depreciation reserve should be based upon a percentage of costs or "ledger values." See said opinion, page 375; and it is true, as urged by counsel for the Public Service Commission herein, that the American Telephone and Telegraph Company has so kept its books since 1914; and it is also true that the Public Service Commissions of Missouri, Illinois and Wisconsin have approved this system. Nevertheless, the accounting system so approved by said several commissions does not reflect actual facts. As said by Judge Rose in Chesapeake and Potomac Telephone Co. vs. Whitman, 3 Fed. 938-942, "Books so kept would show the cost of company's property at any particular time. In the absence of great changes in value, such cost, due allowance being made for depreciation, would be a fairly accurate measure for present value." The significance of this quotation, in the opinion of this Court, is that the period involved in the present case is just precisely a period during which there have been great changes in value. Much of the depreciable property of the company involved in the present calculation was acquired prior to the year 1914, at pre-war cost levels. Its value, as determined in the valuation case, as of January 1, 1924, based on post-war price levels, differs so materially from pre-war costs that the use of the accounting or cost system as the rate base for depreciation reserve is, in the opinion of this Court, unreasonable and unlawful.

(2) *The amount allowed for depreciation reserve should be based, so far as it possibly can be, upon objective evidence.*

Havre de Grace Bridge Co. vs. Public Service Commission, 132 Md. 16-32-33; Pacific Gas Company vs. San Francisco, 265 U. S. 403-405-406.

"The testimony of competent valuation engineers who examined the property and made estimates in respect to its condition is to be preferred to mere calculations based on averages and assumed probabilities."

McCardle vs. Indianapolis Company, 272 U. S. 400-417.

The Commission allowed for depreciation reserve the annual sum of $883,544. *This is obtained by taking* 5 *per cent. of assumed gross returns under the rates of fare allowed by it.*

(1) Although this measurement of depreciation reserve by a percentage upon gross returns is a usual accounting practice, it is hard to justify it upon any principle of logic. To this Court, it seems almost totally irrelevant. The Commission recognizes this irrelevance; but justifies its method upon the ground that the result seems to work out "fairly well." *See opinion of Commission, pages* 26-27.

(2) It was conceded during the argument by Company's counsel that if the result did work out "fairly well" then the irrelevancy of the method employed by the Commission in arriving at its result would be no sufficient reason for judicial review of its act—and this concession was made in the face of the language used by the Court of Appeals at the conclusion of its recent opinion in the case of *Electric Public Utilities Co. vs. West et al.*, filed February 15th, 1928, and reported in The Daily Record of February 18th, 1928. However, the Commission did more than announce a result founded upon an irrelevant method of calculation. It tested that result by an analysis of the testimony in the case. "Depreciation" is discussed in the opinion of the Commission upon pages 22 to 30, inclusive. That discussion reveals fully the reasons which lead this Court to conclude that the amount fixed by the Commission for de-

preciation reserve was unlawfully fixed and probably was an unreasonably low amount. The opinion of the Commission shows the use by it of the following improper methods:

(a) It based depreciation reserve upon cost rather than present value. For the reasons stated above in discussion of Question II, paragraph A, 1, the Court disapproves that basis.

(b) It assumed a fixed relationship between the per cent. condition of Company's property and past depreciation, and from this assumption proceeded to determine rate of depreciation. This assumption is fallacious because the per cent. condition takes no account of obsolescence, either ordinary or extraordinary. Certainly proper depreciation reserve should make provision for ordinary obsolescence.

(c) It threw out and practically disregarded the only evidence of competent valuation engineers who examined the property and made estimates of its condition, and based its conclusions instead upon mere calculations based on averages and assumed possibilities. In this the Commission reversed the procedure approved by the Supreme Court of the United States and adverted to above in this opinion, under Question II, paragraph A, 2.

C.

The Court's Conclusions Regarding Depreciation Reserve.

Upon this question further consideration by the Commission is plainly necessary. What may be called the real evidence, or the affirmative evidence, upon the question, pionts strongly to the conclusion that the Commission's allowance of $883,544 is inadequate. But in the present state of the record, the Court cannot conclude whether the Company's claim of $2,200,000 is reasonable or is excessive. It is clear that the Commission, in testing its reasonableness, has used a false measuring rod, has made a fallacious assumption of relationship between per cent. condition and depreciation, and has substituted theoretical calculations and assumed probabilities for affirmative evidence not contradicted in the record.

Probably, however, evidence is available which was not brought forward at the original hearing which may justify the Commission in rejecting or in modifying the Company's claim for depreciation reserve. At all events, the Commission should investigate this matter thoroughly and make a new computation. Its own engineers should examine the property physically and should testify as to the physical condition, plus the ordinary obsolescence, plus the "life expectancy" of the several classes of depreciable property in such "life expectancy" what they consider a reasonable allowance for accruing ordinary obsolescence. Upon such testimony, along with the like testimony of Company's engineers, the Commission should make a new computation which should be made so as to show the Court that these legal standards have been used in the making of it. When the Commission shall have done this, and, in its usual fair and clear manner shall show that it has done so, its findings will become one of those quasi-judicial "legislative" acts performed by an administrative body to which the Court will give the weight assigned to it by the Court of Appeals in *West vs. Byron,* 138 *Atlantic* 404-410.

QUESTION I.

Is the Return of 6.26 *Per Cent. Allowed by Commission Unlawful?*

A

The Commission has fixed 6.26 *per cent. as neither unreasonable nor confiscatory. The Company contends generally for* 8 *per cent., but bases its specific claim on a calculation showing approximately* 7½ *per cent. See Company's Exhibit No.* 24, *opinion of Commission, page* 18.

The authorities show a strong judicial drift towards regarding 8 per cent. as a fair rate of return for regulated public service industries. The Commission disregards this judicial drift on two grounds, viz.:

(1) That the risk of return is greater in the case of an urban street railway company than in those public utilities as to which the Courts have approved an 8 per cent.

rate of return; and that therefore a lower rate of return should be granted to an urban street railway company. This is a ground of distinction which may be said to be founded upon a principle—whether a true principle or a false principle will appear below.

(2) That the urban street railway industry as a whole is not and has not been earning an 8 per cent. return. This is a ground of distinction founded not so much upon the assertion of a principle as upon an observation of facts and an assumption of causal relationships respecting them.

B.

The Court's Opinion On the Commission's Determination That 6.26 Per Cent. Is a Fair Rate of Return.

(1) Whether sought to be justified either on the ground just stated in sub-paragraph 1 or in sub-paragraph 2 above, the Commission's determination is subject to an identical infirmity, viz., its assumption that urban street railway properties are in a category by themselves. The Court's opinion is that the true basis of a category is not the specific service rendered,—which might result in one rule for gas companies, another for electric companies, another for water companies, another for a combination of the above, and still another for street railway companies,—but is that within the category there shall be included all regulated public service corporations performing a necessary service, and subject to similar business risks.

The best illustration of the impropriety of the Commission's theory, which groups urban street railway properties by themselves, is the practice followed by the Supreme Court of the United States in its consideration of a water company case, viz.: McCardle vs. Indianapolis Water Company, 272 U. S. 400-419. Passing upon the constitutional rate of return for a water company, the Supreme Court cited the decisions in ten cases, of which four dealt with gas companies, one with a natural gas company, one with a street railway, three with telephone companies and only one with a water company.

The Commission has not arbitrarily ignored the above

theory of classification which this Court suggests; but it cites no authorities for departing from it. This is somewhat strange; even more strange is the Commission's suggestion that this regulated public industry should be placed in a class with jobbers of merchandise. Se Commission's opinion, page 21. Although the Commission cites no authorities, its decision plainly proceeds from its acceptance of the principle expressed in that group of cases of which Covington & Lexington Turnpike Road Company vs. Sanford, 164 U. S. 578, decided in 1896, may be regarded as the prototype. That is to say, the Commission assumes that in the case of an urban street railway company it is dealing with a moribund industry of questionable public necessity; and that in the case of such an industry the value of its service to the public must be given a controlling force in the equation which will determine fair rate of return. Unquestionably, the Covington case and those like it, cited by counsel for the Commission on their brief, are authorities for this proposition not only in respect of moribund industries but also in respect of industries which are as yet undeveloped.

Does the urban street railway industry fall within this classification,—is it a moribund industry? This Court thinks not, for the following reasons:

(a) Though the Commission has fixed a rate based on this principle, it has by its findings of fact, expressly negatived its own major promise. The opinion of the Commission under the head "Railway Service a Necessity," pages 7, 8 and 9, is as strong a statement on this question as the Court can conceive.

(b) The evidence shows that the facts sustain the opinion of the Commission that the industry is necessary, and do not sustain its action, which rests upon a contrary assumption. See testimony of C. D. Emmons, Record, page 3282. This evidence, which is not disputed, shows that at the hours of peak load, the Company carries more passengers now than it ever did. Hence it is obvious that the competition of the private automobile, of which so much has been said in the briefs and in argument, has *modified* the need for public trans-

portation in Baltimore, but has not shown a tendency to supplant it. This modification results in an increased cost of service. Necessity of service is as great as it ever was.

(c) The legal principle inherent in the action of the Commission has never been announced in the case of an urban street railway company. The Covington case, supra, dealt with a turnpike road. Counsel for Commission cite in their brief a number of cases adopting the same principle in dealing with interurban electric railways, and one case from the Supreme Court dealing with a small logging railroad. These industries differ in kind from all other forms of regulated public industry, including urban street railways. They really are *moribund* industries,—many of them have died without resultant loss to the community formerly served by them. The cases cited should be read, therefore, not as statements of abstract law but with reference to their subject matter.

(2) We shall now examine separately the validity of the grounds of distinction relied on by the Commission.

(a) With respect of the Commission's proposition that since the risk of the business is greater in urban street railway cases than in the case of other utilities, their rate of return should be less, it is obvious that the Commission has reached an inverted conclusion, unless the term "risk of business" is used, and properly used by it, in the sense of describing an undeveloped industry or a business demonstrably moribund and visibly doomed to extinction. The urban street railway business is not *now* so visibly doomed. It may become so, or it may not. But present rate regulation should not proceed upon the prediction that it will. Unreasonably low or confiscatory rates so based certainly would tend to produce consequences which might justify the prediction.

(b) The proposition that the street railway industry is not and has not been earning more than 6.26 per cent., and that hence an allowance of that amount is fair, is by far the most persuasive statement, in a poular sense, which appears in the opinion of the Commission. The Commission elaborates that statement, by saying not

only that it *is* so but by suggesting as the reason for its being so that the urban street railway utilities themselves have admitted its inevitableness by not attempting to get rates of fare high enough to prevent its being so. From this the Commission continues, first, that probably the "traffic will not bear" such rates,—that the "economic limit" of fares has been reached and that present rates are "economic rates" as defined in Re Fishkill Electric Railway Company (N. Y. P. S. C., 2nd Dist.), P. U. R. 1919 D, 1, at page 7 (see Note below); and, secondly, by implication, that the failure of such utilities "to appeal for their rights in court" over a period of years disentitles them now to do so. The Court accepts neither of these propositions. As to the former, the Court's position will be made clear below under Paragraph C, 3 of this section of this opinion; as to the latter, it is sufficient to cite Bluefield Company vs. Public Service Commission, 262 U. S. 679, 694-695.

C

What Principles Should Govern in Fixing Rate of Return and What Rate of Return Should Be Allowed?

While no precise formula has been announced by the courts, and no rate of return applicable equally to all public utility companies can be determined, because each case must rest upon its own circumstances, nevertheless, we return to the general principle announced by the Supreme Court in Smyth vs. Ames, supra, that the rate of return must be fair both to the Company and to the public.

NOTE: "A requested increase may apparently be justified because of a lack of reasonable return; and yet the increase asked might, if granted, actually result in a decreased, instead of an increased, revenue. Where a deficiency in revenue must be met, the real problem is to find and fix the rates that will permit the most people to ride and still be high enough to cover costs. These rates may well be called the economic rates. Lesser rates spell bankruptcy; higher rates mean reduced operating revenue and a similar result. When these rates are finally found, they measure the economic demand for trolley service in that community. If the service is more extensive or more expensive than such demand requires, then the system to become and remain solvent must scale sufficient assets or abandon enough of its tracks, or both, to reduce the outgo. The income has reached its limit at that point." Re Fishkill Electric Company (N. Y. P. S. C., 2nd Dist.), P. U. R. 1919 D, I, at page 7.

Probably the most significant development of the law in this regard since Smyth vs. Ames, supra, is that the determination of what is fair to the utility company has been decided to rest upon the percentage of return upon the "value of its property used or useful in the public service" quite regardless of the financial structure of the utility company, and equally uncontrolled by the original cost of said property. This development of the law has been gradual; and it is conceivable that the present statement of it may not be final. The decisions of the Supreme Court, upon which this legal proposition is now so firmly founded, are punctuated by vigorous and persuasive dissenting opinions proceeding from the pen of Mr. Justice Brandeis, upholding the conflicting doctrine that rate of return should be calculated upon "prudent investment cost." However, whatever may be the future development of the law, it is well settled, at this time, that rate of return must be calculated upon present value.

1. *What is a "fair" rate of return from the point of view of the regulated company?*

In order that the return may be "fair to the Company" it must cover the "cost" of service,—"cost" meaning expenses of operation plus a fair return on the investment. Moreover, a "fair return on the investment" must be such a return as that from which it might reasonably be expected that money will be invested in the enterprise. In the light of the recent authorities, it is thought that this statement is axiomatic. The only exception to its applicability is in the case of those utility companies whose service cannot be said to be necessary. We have seen above that the United Railways & Electric Company of Baltimore does not fall within this category.

The propositions of law in this subsection of this opinion are so well settled that it is deemed unnecessary to analyze the authorities upon which they rest. Some of the principal cases are:

Wilcox vs. Consolidated Gas Company, 212 U. S. 19; Des Moines Gas Company vs. Des Moines, 238 U. S. 153; Lincoln Gas Company vs. Lincoln, 250 U. S. 256; Bluefield Company vs. Public Service Comm., 262 U. S. 679; Gal-

veston Electric Co. vs. Galveston, 258 U. S. 388; New York Telephone Co. vs. Prendergast, 300 Fed. 822; McCardle vs. Indianapolis Water Co., 272 U. S. 400; Alton Walter Co. vs. Illinois Commerce Comm., 279 Fed. 873.

2. The cases above cited, and many others, might be regarded as abundant authority for the proposition that a public utility such as the company in this case is subjected to daily confiscation of its property and that the continuation of rates of fare producing a return of less than 8 per cent. on the value of its property amounts to the taking of such property without due process of law in contravention of the 14th Amendment of the Federal Constitution. It is both interesting and significant that in the opinion just handed down by the Federal Statutory Court for the Southern District of New York in the case of Interborough Rapid Transit vs. The Transit Commission while thousands of words are devoted to the consideration of other questions involved in that case, the Court assumes as beyond the sphere of argument that the company is entitled to an 8 per cent. return on the present value of its property, and cites only four cases in support of such assumption, viz:

McCardle vs. Indianapolis Water Company, 272 U. S. 419; Bluefield vs. Public Service Commission, 262 U. S. 679; Galveston Electric Company vs. Galveston, 258 U. S. 388; Brooklyn Union Gas Company vs. Prendergast, 272 U. S. 580.

Many additional cases sustaining the same proposition have been cited on company's brief. This Court might well conclude that it is established by the authorities that a return of 8 per cent. on present value is the minimum limit for the avoidance of confiscation. For the purpose of the present case, however, it is not necessary to go quite so far. It must be assumed that Company has, in this case, stated its position with full regard for what it conceives its right to be. Company's Exhibit No. 24 analyzes what company claims to be the result of a grant of the right to charge a flat ten-cent fare. This exhibit shows that said fare would yield a return of 7.44 per cent.; and company expresses its satisfaction with that rate of return.

It has been well said that no two rate cases are precisely alike. It is also true that prevailing interest rates on bonds, at least, have fallen since many of the cases approving an 8 per cent. return on value were decided. While it is obvious that the price at which money can be obtained as an investment in bonds has no direct relationship with the rate of return upon rate base to which a utility is entitled, nevertheless falling interest rates do bear some relationship to the question of the rate return which a company must earn in order that it may attract capital for investment. It is reasonable to assume that a recognition of this relationship by company plays some part in its expressed opinion that a return of 7.44 per cent. would not be confiscatory.

It is also suggested that the test in a State Court is not merely confiscation but also reasonableness. The Maryland Court of Appeals has recognized this in Pennsylvania Railroad Company vs. Public Service Commission, 126 Md. 59, 76-77. It is conceded that the margin of difference between a confiscatory rate and a rate unreasonably low is not great. Viewing this case in the light of its own circumstances, and giving due weight to Company's Exhibit No. 24, this Court is of the opinion that a rate of fare which would produce a rate of return not exceeding 8 per cent. on value would not be unreasonably high; but that any rate of fare producing a rate of return lower than 7½ per cent. on value certainly is both unreasonably low and confiscatory.

3. *What is a "fair" rate of fare from the point of view of the public?*

Reverting once more to the fundamental principles announced in Smyth vs. Ames, supra, the public is entitled to demand that rates shall not call upon it to pay more than the services rendered are reasonably worth. A fair rate must be fair to the utility and fair to the public. How can the question of fairness to the public be tested?

(a) Manifestly it must be within the "economic limit." Testimony of Professor Jacob H. Hollander, pages 3160 et seq., is regarded by the Court as most persuasive upon the proposition that this "economic limit" would not be exceeded even by the rate of fare sought by the company.

At this point, it might be well to add that the Commission, in its finding that the increase of rates of fare from 7½ to 8⅓ cents may be expected to cause a falling off of only 2 per cent. in patronage, with a substantially large resultant increase of net return, reinforces the opinion of this Court that the "economic limit" of fares is not even being approached. Also, it is reasonable to assume that the enlightened self-interest of the company would prevent it from attempting to secure fares in excess of such "economic limit."

Against this assumption, the Commission in its opinion calls attention to the fact that urban street railway companies generally have not attempted to charge fares as high as those which the company seeks to charge. From this circumstance, the Commission concludes that the management of said companies has been motivated by a recognition of the fact that fares of such magnitude would be subjected to the economic law of diminishing returns. Obviously, that is merely a speculative assumption on the part of the Commission, which has no way of knowing such motives. This Court hesitates to indulge any similar speculative assumptions. Yet it may well be that the reluctance of urban street railway management to push its demands towards or up to the point at which returns would be adequate, as defined in respect of other public utilities, may proceed from the traditional force of the concept of a five-cent fare as being synonymous in the public mind with "carfare" in a quisa generic sense. This is a simple concept, much more readily grasped than anything analogous to it in connection with telephone rates, gas rates, and the like; and it causes public resentment against each successive increment of increased carfare in a thoroughly illogical manner. Thus, when fares are raised from 7½ to 8⅓ cents, a large section of the public immediately compares the new fare not to the old one which preceded it, but to the fondly remembered five-cent fare of its youth, and complains bitterly about an increase of 3⅓ cents. A recognition by urban street railway management of the force inherent in such a widely held popular concept may explain sufficiently the slowness of urban street railway management in asserting its rights in Court, both in this jurisdiction and elsewhere; for management, if wise, is slow

to do anything which may disturb its relations with the public.

The aforegoing speculation, on the part of this Court, avowedly is speculation. It is stated, however, merely to emphasize the Court's view that the assumption of the Commission as to recognition by street railway management of its "economic limits" and "point of diminishing returns" is equally speculative. Against both speculations, the Court cites again the testimony of Professor Hollander above referred to, as well as the experience of the Boston street railway system under a ten-cent fare.

(b) A rate of fare to be fair to the public must represent the fair value of the service rendered. "Value," as here used, has little to do with cost. It is subjective with the fare-paying public. It is a concept compounded of economic law and of psychology. Admittedly, it is extremely difficult to define. In the oral argument of the related cases of the People's Corporation vs. Public Service Commission and the State Committee of the Socialist Party of Maryland vs. Public Service Commission, the Court heard vigorous and able statements bearing upon this phase of the case. The Court does not wish to seem to disregard these statements. Not only do they possess a stirring human quality, but they are entitled to serious consideration as a matter of law. A Court which would be deaf to the assertion that a proposed rate of fare would compel a substantial portion of the public to walk to and from its work, a Court which would shut its ears to a plea that working men and women ought not to have an additional dollar taken from their meagre weekly earnings in order that holders of corporate securities may wax richer, would not only be lacking in essential humanity, but would be closing its ear to the fundamental rule of law announced in Smyth vs. Amos, supra, and so often heretofore adverted to, that rates must be "fair to the public."

But a proper regard for this fundamental principle is to be determined neither by rhetoric nor by sentiment. In the first place, the extreme difference of 2½ cents between a 7½-cent fare and a ten-cent fare amounts to only thirty cents for six round trips per week. In the

next place, while it probably is true that many individuals in a city like Baltimore are living so close to their own "economic limits" that a difference of only a few cents a week may impose actual hardship upon them, that fact cannot exercise a controlling influence; and the Court must subordinate it to the principles of law which are binding in the decision of the question.

It has been said that the question under consideration is subjective with the public and that the answer to it depends partly upon psychology. But it can be approached, and the Court thinks it should be approached, obectively. A dollar today is not the same thing as a dollar in 1913. Its purchasing power is less; and dollars are not distributed through the community in 1928 precisely as they were distributed in 1913.

The Court thinks it reasonable to begin with the assumption that a five-cent car fare in 1913 was "fair to the public." According to the testimony of *Professor Hollander, Record, page* 3057 *to page* 3170, the best available official sources of information show that the cost of living is now 173 per cent. of what it was in 1913. Commission's counsel (*Brief, page* 36), admit that this fact alone makes a fare of between eight and nine cents in 1928, the exact equivalent of a fare of five cents in 1913. Of course that would not be so unless the people who have to pay the fare are earning $1.73 in 1928, as against $1 that they were earning in 1913. Are they doing so?

The same statistical data produced by Professor Hollander answer this question by showing that, on the average, work for which wage-earners were paid $1 in 1913, now yields them $2.20. This Court confesses its hesitancy to accept at par any economic conclusion based upon statistical analysis. All statistical data are very pliable. Nevertheless, the figures quoted are from the best sources available and they are not contradicted by anything in this record. Objectively, they seem to show that the increased fares herein under consideration will be "fair to the public" in the sense that, tested by the real purchasing power of the wage-earning public, they will cost that public no more than did the admittedly fair five-cent car fare of pre-war days. This seems to the

Court to be full and substantial compliance with the salutary rule of law announced in *Smyth vs. Ames.* Furthermore, the Court observes the following in the opinion of the Commission as bearing upon this same question of value of service, viz:

> "In fact, taking all things into consideration, including the cost of giving the service, the extension of lines and fare zones, the greater transfer privileges, the auxiliary bus lines and the like, the Commission believes that street car riders as a whole today receive relatively much more for the fare they pay than they ever received for a five-cent fare." —*Opinion of Commission, page* 9.

4. Finally, on this branch of the case, it is urged by Commission's counsel that the Court should not interfere by injunction until a test of the effect of the rate under actual operation has been made. A number of authorities are cited in support of this proposition, notably *Pa. Railroad Company vs. Public Service Commission,* 126 Md. 59, 80.

An examination of these cases demonstrates that the principle invoked has no proper application in the instant case. That principle applies where the evidence is conflicting or uncertain as to the probable remunerative effect of a new tariff. As quoted by the Maryland Court of Appeals, "It can soon be settled which is right, the railroad company's officers or the railroad commission, in their view of the effect of the Commission's tariff of rates by allowing the tariff to go into operation." But in the instant case, both the Commission and the Company agree that the rate ordered by the Commission will yield a maximum return of 6.26 per cent. In the Court's view, such return is unreasonably low and confiscatory. Therefore nothing would be gained by permitting its operation over a trial period.

QUESTION III.

Was the Action of the Commission in Fixing the Present Value of Company's Property to be $75,000,000 *Unlawful?*

Without extending this already too long opinion, it is sufficient to say that the Court has considered carefully

the Company's contentions in this regard and finds that the Commission, in this portion of its action, exercised fairly its "legislative" or administrative discretion. At the most, it might be said that the Commission made a mistaken application of right standards. But it did not, as in its action in fixing depreciation reserve, use erroneous and illegal standards. Error of this kind, if there be error, is not subject to judicial review.

QUESTION IV.

Was the Order of the Commission in Abolishing the Second Fare to Halethorpe Unlawful?

What has been said in the last preceding section of this opinion applies with even greater force to this question. In fact, the Court fully agrees with the Commission's conclusion upon this question. Of course, the estimated loss of $40,000 of annual revenue resulting therefrom, is a factor to be taken into consideration in the ultimate determination of a fair rate of return.

CONCLUSIONS.

From what has been said it follows that this case must be remanded to the Commission for the taking of additional testimony on the question of depreciation reserve.

Should the Commission, after fixing finally what it conceives to be a proper legal allowance for depreciation reserve, make a final order fixing rates of fare upon a basis which will yield a rate of return upon the rate base of $75,000,000 of not less than 7½ per cent. and not more than 8 per cent., such rates of fare, so fixed, will be permitted to stand. If, however, the Commission shall adhere to its ruling that a fair rate of return is less than 7½ per cent., and shall by its order establish rates of fare in accordance with that ruling, then the Court will be required, in accordance with this opinion, to issue its injunction. Whether such injunction shall issue, as well as the terms and conditions which may be annexed to it, are questions which cannot be decided until the Commission shall have taken further action.

The case is hereby remanded to the Commission; and an appropriate order, to that effect, will be signed.

(5)

DECREE.

(Filed May 11, 1928.)

In the Circuit Court No. 2 of Baltimore City.

The United Railways and Electric Company of Baltimore

vs.

Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, Members, Constituting the Public Service Commission of Maryland.

This cause having been set down for hearing and coming on to be heard on the pleadings and the transcript of papers and proceedings, including evidence, in the case before the Public Service Commission, and having been argued by counsel for the parties, and the Court being of the opinion, for the reasons stated in its opinion filed in this cause, that the rates fixed by the Order No. 12639 of the Public Service Commission passed on February 10, 1928, and said Order and prior orders limiting rates charged by the plaintiff, are unconstitutional, unlawful and unreasonable and fail to allow to the plaintiff a fair return on the fair value of its property; and the defendants, constituting the Public Service Commission of Maryland, having elected not to have this cause remanded to them for further proceedings upon the lines suggested in the Court's opinion, but to have a final decree or order entered forthwith,

It is thereupon this 11th day of May, nineteen hundred and twenty-eight, by the Circuit Court Number Two of Baltimore City, adjudged, ordered and decreed that said Order No. 12639 of the Public Service Commission of Maryland be and the same is hereby vacated and set aside in so far as the same purports to limit the rates of the plaintiff; except, however, as to that portion of

said order which extended the first fare zone on the Halethorpe line to the terminus of said line at Halethorpe, as to which latter provision in said Order the bill of the plaintiff is hereby dismissed.

And it is further adjudged, ordered and decreed that the defendants and their successors in office be and they are hereby perpetually enjoined and prohibited against enforcing against the plaintiff the provisions of said Order No. 12639 in so far as the same limit or purport to limit the rates of fare to be charged by the plaintiff and also against enforcing against the plaintiff the provisions of any prior orders of the Commission limiting or purporting to limit the rates of fare to be charged by the plaintiff.

And it is further ordered that the costs in this cause be paid by the defendants.

JOSEPH N. ULMAN.

(6-A)

ORDER FOR APPEAL.

(Filed May 11, 1928.)

In the Circuit Court No. 2 of Baltimore City.

The United Railways and Electric Company of Baltimore

vs.

Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, Members, Constituting the Public Service Commission of Maryland.

ORDER FOR APPEAL.

Mr. Clerk:

Please enter an appeal to the Court of Appeals of Maryland on behalf of the defendants, from the decree entered by the Court in the above entitled case on the eleventh day of May, nineteen hundred and twenty-eight.

THOMAS J. TINGLEY,

RAYMOND S. WILLIAMS,

Special Counsel to the Defendants Constituting the Public Service Commission of Maryland.

State of Maryland, City of Baltimore, to wit:

I hereby certify that on this 11th day of May, nineteen hundred and twenty-eight, before me the subscriber, a Notary Public in and for the State and City aforesaid, personally appeared Harold E. West, Chairman of the Public Service Commission of Maryland, and made oath in due form of law that the appeal in the above entitled case is not taken for purposes of delay.

EVELYN M. WYNIGER,

(Seal.) Notary Public.

My Commission expires May 6, 1929.

(6-B)

ORDER FOR CROSS-APPEAL ON HALETHORPE.

(Filed May 23, 1928.)

In the Circuit Court No. 2 of Baltimore City.

The United Railways and Electric Company of Baltimore

vs.

Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, Members, Constituting the Public Service Commission of Maryland.

Mr. Clerk:

Please enter an appeal on the part of the plaintiff to the Court of Appeals from that part of the decree which dismissed the bill as to that portion of the order of the Public Service Commission which extended the first fare zone on the Halethorpe line to the terminus of said line at Halethorpe.

(Sgd.) HENRY H. WATERS,

(Sgd.) HAMAN, COOK, CHESNUT & MARKELL,

(Sgd.) VENABLE, BAETJER & HOWARD,

(Sgd.) JOSEPH C. FRANCE,

Solicitors for The United Railways and Electric Company of Baltimore,

Plaintiff.

(7)

APPLICATION OF THE UNITED RAILWAYS & ELECTRIC CO. IN CASE NO. 2648, BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND.

Before the Public Service Commission of Maryland.

In the Matter of the Application of The United Railways & Electric Company of Baltimore for a Modification of Certain Orders now in Force Fixing Its Rates of Fare; and for a Change in Its Rates and Fares.

To the Honorable, the Public Service Commission of Mayland:

The United Railways and Electric Company of Baltimore, the petitioner in the above entitled case, respectfully shows unto your Honorable Commission:

(a) That (as is well known to your Honorable Commission and its records will show), you petitioner has been endeavoring for years past, through economies and savings in its operations to keep down the cost of its service to the car riders of Baltimore, and this has been done, notwithstanding (1) that the net fare received by the Company after deducting the Park Tax, is below the net fare of all privately operated street railway companies in cities the size of Baltimore, or larger, with the exception of New York, in which City, it is common knowledge, the tax-payers make up large shortages in Revenues; (2) the present rate of fare is inadequate to give a fair return on the value of your petitioner's propeties devoted to the public service, and (3) that the Net Income of your petitioner has constantly fallen short of the amount estimated by the Commission as necessary for good credit and satisfactory service to the public.

Some of the expedients, which your petitioner has adopted for the purpose of effecting such economies,

have not been popular, and have been resorted to in the expectation that the total economies effected would be sufficient to avoid the necessity for any further increase in car fare.

These efforts of your petitioner have extended over several years, and without any fault on the part of your petitioner, these expectations have not been realized.

Apart from the mounting tendency of operating costs, as hereinafter shown, is the fact that, since January of the present year, the tide has set definitely against your petitioner. Gross Receipts (Passenger Revenue) for the last three months, when compared with the same three months of 1926, have fallen short approximately $167,000, or at the rate of over $660,000 a year, which represents more than one-half of the Net Surplus Earnings of the Company for the year 1926, after the payment of Operating Expenses, Taxes and Interest on Indebtedness. At the same time, taxes, wages and other items included in the cost of operation have increased, so that your petitioner is now confronted with an emergency which requires immediate relief, if it is to continue to perform its public service, maintain its credit and secure necessary money to provide new cars and other equipment.

That the increases of fare heretofore authorized by your Honorable Commission have not proportionately added to the Company's revenues, appears from the recent Opinion filed in the Valuation case, as follows:

> "In addition to the higher costs of operation which went to absorb the increased revenue resulting from the successively increase rate of fare, the Commission from time to time extended the fare zones on the suburban lines of the Railways Company until finally by its Order No. 8240 entered in Case No. 1682 on May 26, 1924, it extended the city fare to the city limits on all lines where it had not theretofore been extended to the city line and made other zone extensions on the county lines, and also provided for the sale of school tickets at the rate of fare of five cents per trip. All these changes reduced materially the revenue which the Railways

Company otherwise would have obtained from the higher rates of fare."

Your petitioner believes that a ten-cent fare is necessary to enable it to serve the public adequately and obtain funds necessary for the coming years to keep pace with the growing needs of the City, and obtain a Fair Return on the fair value of its properties. Your Honorable Commission, however, will doubtless desire to give full consideration to all relevant facts and figures (including the Valuation, not yet finally arrived at, in the pending Valuation proceeding), before establishing new permanent rates of fare.

Nevertheless, your petitioner's position is one demanding prompt and immediate relief. Your petitioner, therefore, now files this petition asking your Honorable Commission to establish a flat fare of ten cents cash for the conveyance of each passenger over twelve years of age, with half-fares at five cents each for children between the ages of four and twelve years, school tickets at five cents each, and commutation tickets at special rates." Your petitioner also asks your Honorable Commission to put into effect at once substantially increased fares in order that pending such establishment of such permanent rates of fare, your petitioner may be able to provide adequate service and meet its obligations.

The long period of years, during which your petitioner's revenues have been grossly inadequate, has so strained its resources that it cannot now further delay asking relief for even the few months which should suffice for a final decision in the pending Valuation case, and, also (in view of the full showing of facts already made in that and prior cases by your petitioner), for the establishing of new permanent rates on this present application.

On the other hand, the fact already established in the Valuation case and in prior cases demonstrate that, pending a final decision herein, substantially increased temporary fares can be put into effect immediately without prejudice to the public interest, and without yielding to your petitioner a Fair Return on the fair value of its properties.

On the basis of Valuation of $77,000,000, as of December 31, 1923, viz: $70,000,000, plus the valuation of easements by the only members of your Honorable Commission who have yet passed on the amount of that Valuation,—or even on the basic value of $70,000,000, exclusive of easements, also exclusive of Net Additions to Capital since December 31, 1923, a flat ten-cent fare, if immediately put into effect, would yield your petitioner for the calendar year of 1927 less than a reasonable return on either valuation mentioned.

(b) That Order No. 8240, as entered by your Honorable Commission in Case No. 1682, on May 26, 1924, fixed the present base rate of fare of seven and one-half cents, when tickets or fare tokens are purchased, or eight cents cash; with four-cent fare for children between the ages of four and twelve years, and school tickets at the rate of five cents for school children and commutation tickets at special rates, and that said fares were continued and are in effect by virtue of Order No. 10072, entered by your Honorable Commission on March 9, 1926, in Case No. 533, which continues the present fare until midnight of April 30, 1928, unless earlier modified by further Order of your Honorable Body.

(c) In the Opinion filed with Order No. 8240, your Honorable Commission estimated the Gross Income of the Company would, by the fares then fixed, be increased by $1,168,212; that from this sum must be taken $588,631 for zone extensions, readjustments and school fares, and $373,705 for increased labor costs, taxes and fixed charges, thereby leaving your petitioner "but $205,876 of the increased fare"; that such increase would bring the Net Income of your petitioner for 1924 to $1,182,142, and make "the Gross Income of the Company approximately one and one-third times its Fixed Charges."

The actual Net Income, however, that your petitioner was able to earn for the year 1924 under the fares fixed by said Order No. 8240 was but $967,968, or $214,174 less than anticipated by your Honorable Commission. Nor has your petitioner been able in either the year 1925 or 1926 to bring its Net Income to the estimate of your Honorable Commission for the year 1924.

The Net Income of your petitioner for the year 1925

was $980,610 or $201,532 less than said estimate, and its Net Income for the year 1926, though somewhat larger than the preceding year, due to economies in operation, was still only $1,010,054, or $172,088 less than said estimate. Moreover, no further economies can reasonably be effected by your petitioner to increase materially its Net revenues without large Capital outlays, requiring first the strengthening of your petitioner's credit position. On the basis of actual results for the first six months of the present year and probable results for the last six months, the Net Income of your petitioner will be approximately $447,894, or $734,248 less than said estimate.

(d) That your Honorable Commission has stated in Opinions filed after investigations into the rates charged by your petitioner that, when provision for Operating Expenses, Taxes and reasonable allowances for Accidents and Depreciation Reserves have been made and all Fixed Charges met, it would be reasonable and in the best interests of the public for your petitioner, by sensible economies and good service, to earn a Net Balance to Surplus, or Net Income, of $1,500,000, and that said Net Balance to Surplus should not be allowed to fall below $1,000,000, if the credit position of your petitioner is to be maintained. Moreover, your Honorable Commission has declared as a working principle that, pending the valuation of your petitioner's properties, the Gross Income of your petitioner should be equal to from one and one-third to one and one-half times its Fixed Charges.

(e) That your petitioner has prepared and filed regularly with your Honorable Commission sworn statements showing the Gross Income, Fixed Charges and Net Income of your petitioner during the year 1920 to 1926, inclusive, and that said statements disclose the fact that your petitioner, although striving with diligence and practicing economies and efficiencies in operation, has been unable during the period stated to reach the said minimum Net Income of $1,000,000 per annum by the aggregate Net amount of $587,003 for said entire period of seven years, and has fallen short of the reasonable Net Income of $1,500,000 per annum by the total amount of $4,087,003 for said seven years; that during said pe-

riod, the Net Income of your petitioner, when measured on the basis of a Gross Income of one and one-third times Fixed Charges, has fallen short of the required amount by $1,297,854, and when measured on the basis of a Gross Income one and one-half times Fixed Charges has lacked $5,153,283 of the required amount.

(f) Your petitioner further shows that its Revenue Passengers for the year 1921 decreased 6.24% below those for the year 1920; that 1922 showed a similar decrease of 1.83% from 1921; that 1923 showed a gain of only 2.11% over 1922; 1924 a decrease of 4.29% from 1923; 1925 a decrease of 1.83% from 1924; 1926 a gain of less than one-half of one per cent over 1925; that 1926 shows a decrease of 11.29% from 1920, and that, while the month of January, 1927, showed a gain of thirty-two one-hundredths of one per cent over January, 1926, yet the months of February, March, April, May, June and July (July approximate) of 1927 show decreases of 1.61%; 2.51%; 1.39%; 3.93%; 3.24% and 4.21%, respectively, compared with corresponding months of 1926. The seven months period of January to July, inclusive (July approximate), for the year 1927, shows a decrease in Revenue Passengers of 3,116,027, or 2.37%, from the Revenue Passengers for the same months of 1926. These decreases your petitioner attributes, for the most part, to the ever-increasing use of automobiles, and the congestion caused by the parking of automobiles in the downtown section of the City, which necessarily slows up the street cars and makes the operation of the railway much more difficult and much more expensive as a means of rapid transportation. Moreover, while the number of Revenue Passengers carried by your petitioner is falling off, the steady drift of the population of Baltimore City has been, as is well known to your Honorable Commission, farther and farther away from the center of the City to the outlying districts, especially since the annexation of 1918, which, together with zone extensions ordered from time to time by your Honorable Commission, has increased to a marked degree the length of the average ride your petitioner is now called upon to furnish for a single fare, as compared with the average length of ride formerly furnished. A recent study made by your petitioner shows

that during the period 1915 to 1926, inclusive, the total passengers carried over long City lines have increased 50%, while the total passengers carried over short City lines have slightly decreased, and that during the period 1915 to 1926, inclusive, car miles over long City lines have increased approximately 50%, while car miles over short City lines have decreased approximately 9%.

The cost to your petitioner in the increased length of ride required to be given because of the 1924 zone extensions has been checked against the loss predicted at the 1924 Fare Hearing, and it is clear that the zone extensions (together with school fares), required by your Honorable Commission in 1924, are causing a loss in Gross Revenues of your petitioner of approximately $565,000 a year.

(g) That conditions of employment, growth of the use of the automobile, growth of suburban developments (resulting in longer rides for a single fare) and changes in the habits of the people as to the use of the street railway for various purposes have caused large decreases in earnings of your petitioner. While the month of January showed a slight increase for this year over January of last year, each succeeding month since January has shown a decrease in earnings. From January 1st to July 31st, of this year,—212 days—the Gross Earnings (Passenger Revenue) of your petitioner have fallen $253,490 below those for the same period of 1926, or over $1,195 a day, which on the same basis for the entire year would mean over $436,000, or over 43% of the Net Earnings for 1926 of your petitioner. During July of this year, the Gross Earnings of your petitioner have been $59,638 less than they were for the same month of the year 1926, or at the rate of $1,920 a day. If these losses continue at the same rate for the balance of this year, your petitioner will suffer a decrease of $547,000 in its Gross Earnings, or over 54% of its Net Earnings for the year 1926.

Some of this loss in Gross your petitioner has been able to absorb by economies in operation and by curtailment of schedules. Your petitioner has, however, maintained its high standard of service as long as possible and has not cut its schedules until after a serious falling off in its Revenue Passengers has compelled such action.

These large decreases in Gross your petitioner cannot continue to absorb through reduction of service schedules and still give adequate service, and your petitioner cannot but anticipate such a loss in Net as will materially reflect on its credit position.

(h) A study of comparative operating costs for the year 1926 of your petitioner and other street railway companies operating city lines shows that your petitioner, through various economies and efficiencies in operation, has reduced its total operating expenses per car mile to such an extent that it now leads the group as the lowest in cost per car mile; and on the basis of percent of operating revenue, its operating expenses are less than the average for 98 companies operating city lines exclusively. At the same time, the taxes of your petitioner were greater than those of any railway in the group and over 165% of the average for 98 companies operating city lines exclusively.

While the wages of the Platform and Shop Men of your petitioner have not been unreasonable, in view of the living conditions in the City of Baltimore, they are lower than those of the larger cities, especially the cities of the North. In fairness to its employes, and in recognition of their loyal co-operation, your petitioner granted an increase of one cent an hour, effective January 1, 1927, and an additional one cent an hour, effective January 1, 1928; and because of the fact that its neighboring city of Wilmington, Delaware, has as its maximum rate for car men 56c an hour, and the City of Washington a rate of 58c an hour, a promise was made to your petitioner's men that, if it were possible, your petitioner would voluntarily increase the rate of the car men to 55c, an increase of 3c an hour over the 1926 rate of 52c. Your petitioner, therefore, cannot hope to increase its Net Income by lowering the wages of its men.

A comparison of the earnings and expenses of your petitioner for the year 1923 and 1926 reveals the fact that Operating Expenses were held down to an increase of $168,402, largely by reducing Car Miles from 35,873,-841 to 35,304,583 and by cutting Maintenance Expenses by $186,363. While the service furnished by your peti-

tioner was cut 569,258 Car Miles between 1923 and 1926, increased efficiency in the use of equipment made possible an increase of more than 35,000,000 Seat Miles for the year 1926 over the year 1924 (Seat Miles for 1923 not being available).

It is therefore apparent that your petitioner is operating at high efficiency but has been forced to decrease its frequency of service, while it has actually increased service in seat mile capacity, in order to prevent losses in its Net Income.

(i) Your petitioner, therefore, for the reasons herein set forth, finds itself compelled to bring to an end the heavy losses now occurring, which it will be impossible for your petitioner ever to recover, and to that end to ask (1) that the increased fares hereinbefore mentioned be established as new permanent fares, and (2) that pending such establishment of such new permanent fares, substantially increased fares be immediately put in force as temporary emergency fares.

Your petitioner prays for relief accordingly.

Respectfully submitted,

THE UNITED RAILWAYS & ELECTRIC COMPANY OF BALTIMORE,

By CHARLES D. EMMONS, President.

JOSEPH C. FRANCE,

HENRY H. WATERS,

VENABLE, BAETJER & HOWARD,

HAMAN, COOK, CHESNUT & MARKELL,

Attorneys for Petitioner.

State of Maryland, Baltimore City, to wit:

On this 1st day of August, 1927, before me, a Notary Public of the State of Maryland, in and for Baltimore

City, personally appeared Charles D. Emmons, President of the United Railways & Electric Company of Baltimore, and made oath in due form of law that the matters and facts stated in the foregoing petition are true as therein set forth, to the best of his knowledge, information and belief.

Witness my hand and Notarial Seal.

W. FRANK REED,

(Seal.) Notary Public.

(8)

APPLICATION OF THE HALETHORPE COMMUNITY ASSOCIATION, ET AL., IN CASE NO. 2648, BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND.

Before the Public Service Commission of Maryland.

Case No. 2648.

In the Matter of the Application of the United Railway & Electric Company of Baltimore for the Establishment of a Permanent Rate of Fare of Ten Cents and for the Establishment of a Temporary Emergency Rate of Fare Pending the Establishment of Such Permanent Rate of Fare.

In re: Application of the United Railway & Electric Company of Baltimore for right to increase carfare rates in Baltimore City and Baltimore County.

To the Honorable Members of the Public Service Commission of Maryland:

The Halethorpe Community Association, The Arbutus Improvement Association, The Halethorpe Building & Loan Association, The Arbutus Building & Loan Association, The Benson-Link Realty Corporation, The Northwest Halethorpe Corporation, The Arbutus Land Company and the undersigned residents of Halethorpe, Arbutus and Leeds hereby respectfully protest against the granting of the increase prayed for in said application in so far as it applies to the No. 3 line of the United Railway & Electric Company extending from the center of the City to Halethorpe and respectfully petition your honorable body:

That they as corporations, partnerships, individuals and as representatives of the localities of Leeds, Arbutus and Halethorpe be relieved from the unjust and un-

reasonable two fares that now exist with reference to rates upon the Halethorpe or No. 3 line of the United Railway & Electric Company to and from the center of the City of Baltimore by granting to Halethorpe a one fare from the center of City. That the persons, corporations and localities now served by each of the eleven other lines extending to and into the suburbs of Baltimore now have an undue and unreasonable preference and advantage over the persons, corporations and localities of Leeds, Arbutus and Halethorpe, by reason of the two fares now charged to Halethorpe as compares to the one fare from the center of the City charged on said eleven other lines to the great prejudice and disadvantage of your petitioners and protestants and the localities of Leeds, Arbutus and Halethorpe.

That any increase in the fares of the Halethorpe or No. 3 line of the United Railway & Electric Company, unless it be upon a one fare basis and not a two fare basis, will double the unjust and unreasonable discrimination as to rates now imposed upon the persons, corporations and localities now served by the Halethorpe line No. 3 at Leeds, Arbutus and Halethorpe and also double the now existing undue and unreasonable preference and advantage of our competitors over the persons and corporations now residing and doing business along said No. 3 line between Halethorpe and the center of Baltimore and against said localities of Leeds, Arbutus and Halethorpe to the still greater disadvantage of your petitioners and protestants and said localities of Leeds, Arbutus and Halethorpe.

Your petitioners and protestants in justification for the above protest and petition for one fare respectfully show the following facts:

That there are twelve lines of the United Railway and Electric Company extending to or into the suburbs of Baltimore County, namely:

No. 3	Halethorpe line
No. 14	Ellicott City line
No. 23	Middle River line
No. 8	Catonsville line
No. 8	Towson line
No. 15	Overlea line
No. 35	Hillsdale line
No. 28	Lakeside line
No. 26	Sparrows Point line
No. 19	Hamilton line
No. 32	Woodlawn line
No. 5	Pikesville line

Set forth below are the first and second fare mileages with the excess of the various lines over the Halethorpe line and the per cent of excess of the various lines over the Halethorpe line and the average per cent over the Halethorpe line.

A. Mileages.

		MILEAGE.		
Line No.	Name.	First Fare from center of City.	Second Fare.	Total Two Fares.
3	Halethorpe	4⅜	1⅞	6¼
14	Ellicott City	5⅜	2⅝	8
23	Middle River	5⅜	2⅞	8¼
8	Catonsville	5⅝	2¼	7⅞
8	Towson	6½	2⅛	8⅝
15	Overlea	6⅞	——	——
35	Hillsdale	7⅛	——	——
28	Lakeside	7¼	——	——
26	Sparrows Point	7⅝	3¼	10⅞
19	Hamilton	7⅞	1⅜	9¼
32	Woodlawn	7⅝	——	——
5	Pikesville	8¼	3⅝	11⅞

B. Following is a comparison of one fare distances from the center of the City compared with Halethorpe line from center of City to Oaklee:

Line No.	Name.	One Fare Distances From Center of City Compared with Halethorpe Line. Excess Mileage.	% Excess.	Average % Excess.
				57%
3	Halethorpe	.....	.....	
14	Ellicott City	1	23%	
23	Middle River	1	23%	
8	Catonsville	1¼	29%	
8	Towson	2⅛	49%	
15	Overlea	2½	57%	
35	Hillsdale	2¾	63%	
28	Lakeside	2⅞	66%	
26	Sparrows Point	3¼	74%	
19	Hamilton	3½	80%	
32	Woodlawn	3¼	74%	
5	Pikesville	3⅞	89%	

C. Following is a comparison of second fare distances compared with the Halethorpe line second fare distances:

Line No.	Name.	Second Fare Distances Compared With Halethorpe Line Second Fare Distances. Excess Mileage.	% Excess.	Average % Excess.
				38%
3	Halethorpe	.....	.....	.....
14	Ellicott City	¾	40%	
23	Middle River	1	53%	
8	Catonsville	⅜	20%	
8	Towson	¼	13%	
15	Overlea	.....	.....	
35	Hillsdale	.....	.....	
28	Lakeside	.....	.....	
26	Sparrows Point	1⅜	73%	
19	Hamilton	Min. ½	Min. 27%	
32	Woodlawn	.....	.....	
5	Pikesville	1¾	93%	

D. The following is a comparison of total fare distances of two fare lines from center of city compared with the total Halethorpe line two fare distances, from center of city.

Line No.	Name.	Total Fare Distances of Two Fare Lines Compared With Total Halethorpe Line Two Fare Distances. Excess Mileage.	% Excess.	Average % Excess.
				48%
3	Halethorpe	.....	.....	.....
14	Ellicott City	1¾	27%	
23	Middle River	2	32%	
8	Catonsville	1⅝	26%	
8	Towson	2⅜	38%	
15	Overlea	.....	.....	
35	Hillsdale	.....	.....	
28	Lakeside	.....	.....	
26	Sparrows Point	4⅝	74%	
19	Hamilton	3	48%	
32	Woodlawn	.....	.....	
5	Pikesville	5⅝	90%	

E. The following is a comparison of the *one fare* distances from the center of the City *compared with* the Total Halethorpe Line *two fare* distances from the center of the City.

Line No.	Name.	One Fare Distances From Center of City Compared With Total Halethorpe Line Two Fare Distance. Mileage. Excess	Excess. %	Excess. Average % 10%
3	Halethorpe	———	———	———
14	Ellicott City	Min. 7/8	Min. 14%	
23	Middle River	Min. 7/8	Min. 14%	
8	Catonsville	Min. 5/8	Min. 10%	
8	Towson	1/4	4%	
15	Overlea	5/8	10%	
35	Hillsdale	7/8	14%	
28	Lakeside	1	16%	
26	Sparrows Point	1 3/8	22%	
19	Hamilton	1 5/8	26%	
32	Woodlawn	1 3/8	22%	
5	Pikesville	2	32%	

F. The following lines extend into Baltimore County on the first fare distance or zone:

No. 35	Hillsdale line	1/2 mile
No. 28	Lakeside line	1/2 mile
No. 26	Sparrows Point line	1 3/8 mile
No. 19	Hamilton line	3/8 mile
No. 32	Woodlawn line	1 mile

Your protestants and petitioners file herewith as part hereof Comparative Mileage Chart prepared by Sutton-Britcher & Company, Engineers, marked Halethorpe Exhibit A. We are also filing herewith as part hereof a Summary or Tabulated Statement setting forth the above facts and facts shown on said chart marked Halethorpe Exhibit B.

A. That the above figures show the mileage of the first and second fare zones and total mileages of the twelve various car lines running to or into the County.

B. The above figures show that the eleven other lines above mentioned have an average excess haul over the first fare or City zone from the center of the City of 57% more than the first fare of the Halethorpe line to the center of the City.

C. That the second fare distances of the Halethorpe line compared with the seven lines that do have a second fare zone shows that said seven lines in their second fare zones have an average excess of mileage of 38% over the Halethorpe second fare mileage.

D. That the total fare distances of the seven two fare lines compared with the total Halethorpe line two fare distances to the center of the City shows an average of 48% excess mileage over that of the Halethorpe line to the center of the City.

E. The *one fare* distances from the center of the City of said eleven other lines compared with the total Halethorpe line *two fare* distances from the center of the City shows that said eleven lines have an average excess of 10% haul for one fare over what the Halethorpe line is receiving for two fares. That said figures show that of said eleven lines only three of them have a less mileage for one fare than the Halethorpe line has for two fares and that excess in each case is a very small one, while eight of them have a material excess mileage for one fare over what the Halethorpe line is receiving for two fares.

F. That five of the said eleven lines, all five of which have material excess mileage for one fare over the Halethorpe line two fare distances, extend into Baltimore County appreciable distances.

That the communities thus specially favored in Baltimore County and having an undue and unreasonable preference and advantage over the localities of Halethorpe, Arbutus and Leeds and over your petitioners and protestants are:

Lorraine Cemetery on the Hillsdale line ½ mile beyond the City limits; Lakeside line, ½ mile beyond the City limits; Dundalk on the Sparrows Point line, 1⅜ miles beyond the City limits; Taylor Avenue beyond

Hamilton, ⅜ miles beyond City limits and Woodlawn 1 mile beyond the City limits.

The extension to Lorraine Cemetery in Baltimore County and the operation of this line by the United Railway and Electric Company is of recent date, there is no reason or justification for this extension that would not with much greater force apply to the Halethorpe line as the single fare to City limits was of greater mileage before this extension into Baltimore County than the total distance from the center of the City to Halethorpe on its two fare line.

The extension of one-half mile on the Lakeside line into Baltimore County has no justification in excess of the rights of your petitioners on the Halethorpe line. This one-half mile extension on the Lakeside line runs through large landed estates, is very little used, except by the servants of the residents, while Halethorpe, Arbutus and Leeds are largely built up by small home owners dependent upon the United Railway & Electric Company to get back and forth to their homes.

While your petitioners and protestants recognize Sparrows Point as an industrial center and Dundalk as a rapidly growing section, it must be taken into consideration that Halethorpe, Arbutus and Leeds have made their development under most adverse conditions as to carfare rates and there is no justification for Dundalk Junction having a mileage haul of 1⅜ miles for one fare in excess of what is given the Halethorpe line for two fares, and the same we respectfully submit, applies to Hamilton and Woodlawn.

We respectfully call attention to the fact that of the said four lines having only one fare, three of them extend beyond the city limits of Baltimore, the one that does not extend is the Overlea line and has an excess mileage of 10% for one fare over the two fare mileage of the Halethorpe line. The No. 35 Hillsdale line now extended to Lorraine Cemetery has 14% excess mileage for one fare over the mileage of the Halethorpe line two fares and extends into Baltimore County one-half mile. The Lakeside line has an excess mileage for *one-fare* of 16% over the Halethorpe line for two fares and extends

into Baltimore County for one-half mile. The No. 26 Sparrows Point line has a 22% excess mileage for one fare over the Halethorpe line for two fares and extends into Baltimore County 1⅜ miles. The No. 19, Hamilton line extended to Taylor Avenue has 26% excess mileage for one fare over the Halethorpe line and extended into Baltimore County ⅜ miles. No. 32, Woodlawn line has an excess mileage for one fare of 22% over the Halethorpe line for two fares and extends into Baltimore County one mile.

Your petitioners and protestants respectfully show that the property owners and residents of Halethorpe, Arbutus and Leeds are people of moderate circumstances, most of whom are buying their own homes and that any increase in the carfare of the Halethorpe line would be a great hardship and a disproportionate hardship upon them.

That the United Railway & Electric Company having alleged that the emergency increase fare asked for by them is largely necessary because of long hauls, your petitioners and protestants respectfully submit that the granting to the Halethorpe line of one fare from Halethorpe to Baltimore will be only placing Halethorpe appreciably upon the same basis as the various other communities served by the eleven lines above mentioned, the total mileage on the Halethorpe line to the center of the City will then be 10% less than the average mileage of said eleven other lines to the center of the City on their first fare.

That no emergency of the United Railway & Electric Company can justify it or this Honorable Commission in continuing unjust and unreasonable rates to the communities and residents of Leeds, Arbutus and Halethorpe, nor can any emergency of the United Railway & Electric Company justify it or this Honorable Commission in continuing an undue or unreasonable preference or advantage by other lines of the United Railway & Electric Company to any person or corporation or to any locality or to any particular description of traffic in any respect whatsoever as it is now doing upon the other lines of the United Railway & Electric Company extending into the suburbs of Baltimore and into Balti-

more County, nor can any emergency justify the United Railway & Electric Company or this Honorable Commission in continuing to subject the persons, corporations and localities of Leeds, Arbutus and Halethorpe to undue and unreasonable greater traffic charges than is charged on the great majority of the other lines of the United Railway & Electric Company for one fare over what is charged the Halethorpe line for two, to the prejudice and disadvantage of the persons, corporations and localities served by the Halethorpe No. 3 line.

That certainly no emergency of the United Railway & Electric Company can justify the increasing of the burden now unjustly and unreasonably imposed upon the persons, corporations and residents of the localities of Leeds, Arbutus and Halethorpe by the present unjust and unreasonable rates of two fares by still further increasing the undue and unreasonable preference or advantage to the persons, corporations and localities served by the eleven other lines of the United Railway & Electric Company to the still greater prejudice and disadvantage of the persons, corporations and localities served by the Halethorpe or No. 3 line.

The Benson-Link Realty Corporation, Northwest Halethorpe Corporation, Rittenhouse and Kelbaugh, Arbutus Land Company, Inc., Arbutus Building & Loan Association and Halethorpe Building & Loan Association are largely interested and largely responsible for the building of the homes and the financing of same in the neighborhood of Leeds, Arbutus and Halethorpe and have large sums of money invested in real estate and mortgages on property in this community and they sincerely represent to this Commission that unless the communities of Leeds, Arbutus and Halethorpe are relieved from the undue and unreasonable preference and advantage that is given to our competitors, the residents, corporations and localities served by said other

eleven lines over the communities of Leeds, Arbutus and Halethorpe, further development in this section must and will be appreciably and greatly retarded to the great loss and injury of said corporations and partnership and to the great injustice to all the residents of said communities and those of us largely financially interested in the development of property along the No. 3 line.

That your protestants and petitioners most respectfully insist that they are entirely within their legal rights in demanding that the discrimination that has heretofore and now exists against them and against the communities of Leeds, Arbutus and Halethorpe be stopped and that any new rates fixed by this Commission for the United Railway & Electric Company shall place your petitioners and the communities of Leeds, Arbutus and Halethorpe upon the same relative basis as the other eleven communities now served by the United Railway & Electric Company extending out into the suburbs of Baltimore and Baltimore County, and that in this position they are supported by the rulings of the Public Service Commission of New York on this particular point, and further by the U. S. Supreme Court in the case of Portland Railway Light & Power Company vs. Railroad Commission of Oregon, 229 U. S. 397, 57 Lawyers Edition 1248.

Now therefore your petitioners and protestants respectfully pray your honorable body that they be relieved from the unjust and unreasonable two fares now charged on the Halethorpe line between Halethorpe and the center of Baltimore and that they also be relieved from the undue and unreasonable preference and advantage now given their competitors, the persons and corporations and localities, now served by said other eleven lines hereinabove mentioned, which undue and unreasonable preference and advantage is working to the great prejudice and disadvantage of your respondents, and that

your respondents be placed upon the same basis as to fares as the patrons and localities served by said other lines of the United Railway & Electric Company by giving a one fare to and from the center of the City to Halethorpe.

Respectfully submitted,

BENSON, ROWE & CULLEN,

Attorneys for the undersigned

ARBUTUS LAND COMPANY, INC.,

CARVILLE D. BENSON, President.

NORTHWEST HALETHORPE CORPORATION,

CARVILLE D. BENSON, President.

BENSON-LINK REALTY CORPORATION,

CARVILLE D. BENSON, President.

ARBUTUS IMPROVEMENT ASSO.,

By LEWIS A. ENGEL, President.

Test: Secretary: GEORGE J. BERGER.

P. AUGUST GRILL, Atty.

WM. FACH, Cor. Sect.

PETITION FOR ONE FARE TO HALETHORPE.

Joshua S. Hull and 2201 other signers.

Halethorpe Exhibits referred to herein will be found in the Volume of Exhibits.

(9)

ORDER No. 11802.

Before the Public Service Commission of Maryland.

Case No. 2648.

In the Matter of the Application of The United Railways and Electric Company of Baltimore for the Establishment of a Permanent Rate of Fare of 10 Cents and for the Establishment of a Temporary Emergency Rate of Fare Pending the Establishment of Such Permanent Rate of Fare.

Whereas, by its petition filed herein on August 1st, 1927, The United Railways and Electric Company of Baltimore applied to the Commission for the establishment of a flat fare of ten cents cash for the conveyance of each passenger over twelve years, with half-fares at five cents each for children between the ages of four and twelve years, school tickets at five cents each, and commutation tickets at special rates, and asking that, pending such establishment of such new permanent fares, substantially increased fares be immediately put in force as temporary emergency fares; and

Whereas, the application having come on to be heard and it being the opinion and finding of the Commission, after due hearing, that the applicant, The United Railways and Electric Company of Baltimore, has failed to make it appear to the satisfaction of the Commission that the public interest requires the establishment of substantially increased fares as temporary emergency fares pending the establishment of permanent fares, or that the establishment of such temporary emergency fares is necessary for the purpose of providing adequate and efficient service, or for the preservation of property,

It is, therefore, this 20th day of September, in the

year Nineteen Hundred and Twenty-seven, by the Public Service Commission of Maryland,

Ordered: That the application of The United Railways & Electric Company of Baltimore for the establishment of substantially increased fares as emergency fares pending the establishment of permanent fares as prayed for in the petition herein be, and it is hereby, denied and dismissed.

And it is further ordered: That the application of The United Railways and Electric Company of Baltimore for the establishment of a flat rate of ten cents cash for the conveyance of each passenger over twelve years of age, with half-fares at five cents each for children between the ages of four and twelve years, school tickets at five cents each, and commutation tickets at special rates, be, and it is hereby, set for hearing at the office of the Commission, Baltimore, Maryland, on Wednesday, October 26th, 1927, at 10:00 o'clock A. M.

HAROLD E. WEST,

J. FRANK HARPER,

STEUART PURCELL,

Commissioners.

(10)

OPINIONS AND ORDERS OF THE PUBLIC SERVICE COMMISSION IN PREVIOUS RATE CASES AND THE VALUATION CASE.

(A)

CASES NOS. 1568 AND 1583, OPINION FILED JANUARY 7, 1919, AND ORDER NO. 4608.

PUBLIC SERVICE COMMISSION OF MARYLAND.

Before the Public Service Commission of Maryland.

Case No. 1568.

In the Matter of the Application of The United Railways and Electric Company of Baltimore for Permission to Make a Uniform Increase of One Cent in Cash Fares Heretofore Charged.

Before the Public Service Commission of Maryland.

Case No. 1583.

In the Matter of the Complaint of The Public Service Commission of Maryland vs. The United Railways and Electric Company of Baltimore, with Respect to the Fairness and Reasonableness of its Proposed General Increase in its Passenger Rates.

Appearances:

Messrs. Joseph C. France, Edwin G. Baetjer and

W. H. Maltbie, representing the United Railways and Electric Company of Baltimore;

Messrs. Joseph S. Goldsmith, Assistant General Counsel, and Osborne I. Yellott, Special Counsel, representing the Public Service Commission of Maryland.

Peter Peck, Esq., counsel for certain residents of North Baltimore.

J. Cookman Boyd, Esq., counsel for patrons of the Curtis Bay line.

Hearings:

November 18, December 2, 3, 4, 5, 6, 9, 16 and 17.

Arguments

December 17, 18 and 19.

OPINION

By the Commission. Filed January 7, 1919.

On July 19, 1918, the United Railways & Electric Company of Baltimore filed a petition with this Commission in Case No. 1568, setting forth at length some of the additional expenses to which it had been put and was still undergoing by reason of war conditions, and alleging in substance that it was no longer possible to render adequate service to the public at the existing rates of fare. Upon such statement of facts the Company asked "the approval of the Commission for a uniform cash fare of six cents in lieu of all cash fares now collected except in the case of children between the ages of four and twelve years; and in the case of such children and also in the case of all riders now using commutation tickets a uniform increase of one cent."

Paragraph III of said petition was as follows

"Your petitioner expressly disclaims any intention to establish by this proceeding any permanent rate of fare. It asks for relief purely as a war emergency and during the period of war condi-

tions. The sole purpose is to preserve its pre-war efficiency and to prevent, as far as possible, injury to its credit and to its organization and the deterioration of its plant, which would otherwise result. To preserve its credit, it must maintain its former margin of profit; and, without such credit it will be unable to obtain the money over and above amounts now available, for capital expenditures which it will be called upon to make.

"In order to preserve such credit, however, it will not be necessary, and it is not intended that any part of the increased revenue hereby sought should increase the margin of profit which the company has heretofore earned. An examination will show that, notwithstanding the increased charges which began soon after the outbreak of the European War, the Company was able to set aside a depreciation reserve of five per cent. of the gross revenue, and to pay a sufficient return to security holders to maintain the Company's credit. Since the entry of this country into the war, the situation in this respect has changed greatly, both by reason of the enhanced prices for and the difficulty of obtaining materials because of Government needs and priorities."

At the conclusion of such petition, the Company agreed:

"1. That the new rate shall from time to time and at all times be subject to readjustment and revision by the Commission on its own initiative;

"2. That the resulting increase of revenue shall be applied only to meet the war-produced increases with which it is and may be confronted;

"3. That the surplus, if any there be, shall be used only in accordance with the directions of the Commission upon application duly made."

Owing to the pressure of other matters of great public importance the Commission was unable to promise the representatives of the Company an immediate hearing upon the above petition, and it was uncertain

whether the case could be heard and determined before the end of the current year.

Consequently the Company on August 28, 1918, filed with the Commission its revised schedule "P. S. C. Md. No. 8," effective October 1, 1918, in which it provided for a flat increase of one cent in each of its existing adult, children and commutation fares. Subsequently the Company filed a letter giving notice of an increase of 1¼c in the case of employees' tickets sold in twenty trip books to the Maryland Steel Company, thus increasing this rate from 3¼c to 4½c, and an increase in its strip tickets sold the Central Foundry Company in lots from 4 1-6c to 5c each. In filing such revised schedule the Company eliminated the three cent transfer previously issued to patrons of its Curtis Bay line.

In the letter of transmission accompanying the above schedule, the Railways Company, through its president and attorneys, said:

> "III. As stated in the petition recently filed, the amount of increased revenue which will result from the proposed increased fares is uncertain, and can be determined only by actual trial; and the Company will keep the Commission advised as to the effect of the increase on its revenues.
>
> "IV. The Company understands that this Schedule of Rates is subject to any action the Commission may hereafter take on the petition heretofore filed."

On September 18, 1918, the Commission, of its own motion, filed a complaint alleging that the proposed increases in fares set forth in the above schedule were "excessive, unjust, unfair and unreasonable," and ordered that the matters complained of be satisfied by the Company or that the charges in said complaint be answered in writing within ten days.

On September 24, 1918, the Company filed its answer setting forth certain facts upon which it relied to show that the proposed increases in its fares were not excessive, unjust, unfair or unreasonable, and stating that

it did not know and could not tell, otherwise than by actual trial, how much additional revenue would be derived from the fare increase of one cent to become effective October 1, 1918. It accordingly suggested that the results of the increase after October 1st be checked for use at the hearing before the Commission in such a way as the Auditing Department of the Commission under the direction of the Assistant General Counsel might advise.

On September 26, 1918, the Commission passed its Order No. 4491, setting the issues raised by its complaint and the above answer for hearing on the 18th day of November, 1918, and further directing that the Company keep the Commission advised of the result of the increased fares effective October 1, 1918, and that such result be tabulated in such a way as should be approved by the Accounting Department of the Commission under the direction of the Assistant General Counsel.

On September 30, 1918, counsel for some fifty-one residents of North Baltimore who had filed protests against the Company's application in Case No. 1568, filed a further protest in Case No. 1583, in which they asked the Commission to pass an order notifying the Company to issue excess fare receipts to passengers paying the increased rates to the end that such excess fares might be refunded to such passengers in the event that the same might be declared unlawful by the Commission or by the Courts, the protest alleging further that the action of the Company in increasing its fares in the manner above recited was unlawful. This protest was submitted to the General Counsel of the Commission with a request for his opinion as to the right of the Commission to require such excess fare receipts. On October 2, 1918, the General Counsel filed his Opinion No. 367, in which he concluded that the Commission had no power to pass such an order, and further concluded that Section 768 of Article 4 of the Public Local Laws of Maryland relating to Baltimore City providing that the respondent Railways Company should charge five cents and no more for each passenger over twelve years of age, and three cents and no more for each child be-

tween the ages of four and twelve years respectively had been repealed by Section 31½ of the Public Service Commission Law.

Numerous other protests were filed in Case No. 1583 against the Company's proposed increases in its rates of fare.

Among these protests was one filed November 18, 1918, on behalf of the Interocean Oil Company, the United States Asphalt Refining Company, the Union Ship-Building Company, the Martin Wagner Company, Swift & Company, the Rasin Monumental Guano Company, the F. S. Royster Guano Company, and the Standard Acid Works, all large employers of labor with plants located at or near Fairfield in what is sometimes referred to as the Curtis Bay district, said district being reached by the Curtis Bay line of the Railways Company. In that petition the above parties complained both of the increases in fare effective October 1, 1918, and also of the equipment and service of the Company on the lines leading to Fairfield. This complaint was by order of the Commission consolidated with the main complaint of the Commission in Case No. 1583, and set for hearing on the same date.

At the preliminary hearing on November 18th, Special Counsel for the Commission, in his opening statement, made the point that Order No. 1010 entered by the Commission December 24, 1912, in Case No. 96, the complaint of the Old Frederick Road Improvement Association, et al, vs. The United Railways and Electric Company of Baltimore, and Order No. 1430 of October 20, 1913, in Case No. 579, the Complaint of Louis Knieling, et al vs. the same Company, in so far as said orders fixed the rates of one way and commutation fares to be charged by the Company over the portions of its lines therein referred to, had been violated by the Company's action in putting in effect its increased fares on said lines pursuant to its revised schedule No. 8, effective October 1, 1918, without the prior consent and approval of the Commission. On November 24, 1918, the Company filed its petition in the case referring to the above contention and praying the passage of an order sus-

pending such prior orders pending the hearing in this case. Inasmuch as the Commission's insistence upon the observance of such previous orders pending the hearing in this case would have resulted in great complications in the charging and collection of fares on many of the Company's lines to the general detriment of the service, and would have resulted in many instances in unjust and unreasonable preferences and discriminations, the Commission on November 25, 1918, passed its Order No. 4547 suspending said Orders Nos. 1010 and 1430 to the extent above stated pending the filing of its conclusions in Case No. 1583. Moreover, the Commission's Order No. 4491 of September 26, 1918, setting the Commission's complaint for hearing, and directing the Company to keep the Commission advised as to the result of the increased fares to become effective October 1, 1918, might well have been taken as an implied suspension of such earlier orders pending the Commission's investigation of the propriety of such fare increases, the Commission's understanding at the time of passing such order being that there was to be a uniform increase of one cent over all the lines in the Company's system as set forth in the schedule filed August 28, 1918, to become effective October 1st.

At the preliminary hearing on November 18th, Special Counsel for the Commission filed as exhibits in the case a number of tabulations of figures showing the earnings and expenses of the company in the past, such figures having been taken from the Company's books, and also filed a written analysis of these exhibits, which he read as an opening statement. Accompanying this statement he filed a chart and tabulation in which he estimated the number of revenue passengers who might reasonably be anticipated to be transported by the Company each month from November 1, 1918, to October 31, 1919. This tabulation was as follows::

TABLE X.

Estimate of Revenue Passengers November 1, 1918 to October 31, 1919.

1918.	
November	19,250,000
December	18,750,000
Total, bal. 1918	38,000,000
1919.	
January	17,500,000
February	16,500,000
March	18,000,000
April	18,000,000
May	19,000,000
June	19,500,000
July	19,700,000
August	19,500,000
September	19,000,000
October	19,500,000
Total, 1919	186,200,000

The details of the tabulation becomes of peculiar importance for the reason that the estimates therein contained were subsequently accepted by the Company as the basis of its own calculations as to its probable net earnings up to October 31, 1919.

The actual number of revenue passengers actually transported by the Company during the month of November, 1918, was subsequently shown to have been 18,642,833, or 607,167 (3.15%) less than the number estimated by Special Counsel. The Commission has carefully considered these estimates in the light of the past experience of the Company and of the various facts bearing upon the probabilities as to the future, and concludes that they can be accepted as a factor in the basis of calculations of probable future net earnings without prejudice to the interests of the general public.

FINANCIAL HISTORY OF THE RESPONDENT COMPANY.

The United Railways and Electric Company of Baltimore was formed by articles of Agreement of Consolidation, dated March 4, 1899, which resulted in a combination of all the street lines in Baltimore and Vicinity into a single system, the lines so consolidated being as follows:

The United Railways and Electric Company of Baltimore City, a consolidation of the Baltimore City Passenger Railway Company and the Baltimore and Northern Electric Railway Company; The Baltimore Consolidated Railway Company, a consolidation of the Baltimore Traction Company, the City and Suburban Railway Company and the Lake Roland Elevated Railway Company; The Central Railway Company; The Baltimore, Gardenville and Bel Air Electric Railway Company! The Baltimore, Catonsville and Ellicott's Mills Passenger Railroad Company, purchaser under mortgage foreclosure proceedings of the corporate properties of the Baltimore, Catonsville & Ellicott's Mills Passenger Railway Company; The Maryland Traction Company; The Baltimore & Curtis Bay Railway Company, the stock of which was owned by the Baltimore Traction Company; The Gwynn's Falls Railway Company! The Shore Line Electric Railway Company; The Pimlico and Pikesville Railway Company, and The Walbrook, Gwynn Oak and Powhatan Railroad Company, the stock in the last three companies having been owned at the time of the consolidation by the Baltimore Traction Company.

The authorized capitalization of the new consolidated Company at the date of the consolidation of March 4th, 1899, was as follows:

1st Consol. Mort. 4% gold bonds	$38,000,000
4% Cumulative pref. stock	14,000,000
Common Stock	24,000,000
Total	$76,000,000

At the time of the consolidation $18,000,000 of the 1st Consol. 4% bonds were sold and the proceeds used as part payment for the Baltimore City Passenger Rail-

way Company and the Baltimore Consolidated Railway Company; $15,366,000 were reserved to retire bonds of the constituent companies, and the remaining $4,634,000 were reserved or sold and the proceeds used for betterments, extensions, expenses of consolidation, etc. Not all of the bonds reserved for funding purposes were issued, but $29,450,000 of the same being in the hands of the public at the date of the hearing in this case, and the remainder of the authorized issue either being in the hands of the trustee to be used for the refunding of some $8,550,000 of the underlying bonds still on the properties of certain of the constituent companies, or in the treasury of the Company.

Shortly after the consolidation, to wit: March 30, 1899, the Company authorized the issue of $14,000,000 of Income Bonds with which to retire the preferred stock originally authorized. At the date of the hearings all but $23,000 of such preferred stock had been retired, and $13,977,000 of these Income Bonds were outstanding in the hands of the public. These bonds are secured by a mortgage covering all the property of the Company, subject to its 1st Consol. 4% bonds.

After the Baltimore Fire of February, 1904, it was found desirable to pass the interest on these Income Bonds for the purpose of securing funds for track reconstruction and repair, improvements to power houses and for the general improvement and betterment of the Company's property. Accordingly such interest was passed in 1904 and 1905, and on July 25, 1906 the Company entered into an agreement with the holders of such Income Bonds under which the latter, to the amount of $13,842,000, agreed to accept the interest due them from 1904 to 1910 inclusive in the shape of 5%, 30 yr. Income Funding Bonds, the Company agreeing unconditionally that the principal and interest on these latter bonds should be paid out of income ahead of the priorities of the Income Bond holders. Funding Bonds to the amount of $3,920,000 were issued under this agreement for the purposes aforesaid, and are still outstanding.

Of the $24,000,000 of Common Stock originally authorized, $20,461,000 has been issued up to this date. Prior to 1912 no dividends were paid upon this stock, the Com-

pany's surplus earnings over operating expenses and fixed charges being put back into the property. In 1912 a dividend at the rate of 3% was paid upon the common stock outstanding. To stockholders of record April 11, 1913, a semi-annual dividend of $1.00 per share was declared, this being at the rate of 4% per annum. Since 1913 dividends at the latter rate have been paid regularly.

The Company's financial plan of 1906 entered into after the Baltimore Fire of 1904 necessitated not only the diversion of income to improvements and betterments through the Income Funding Bonds above referred to, but also necessitated securing additional capital for new property, such as terminal stations, car-houses, equipment, extensions, excursion resorts, etc. The existing property was already heavily encumbered by the outstanding First Consol. Mortgage 4% Bonds, and the underlying bonds of certain of the constituent companies, the income, in turn, being pledged to the holders of the Income Bonds and Income Funding Bonds above referred to. As a comprehensive plan of refinancing did not seem feasible at that time, it was necessary to seek some new source of capital for the acquisition of new property. Accordingly the Maryland Electric Railways Company was formed on August 6, 1906, by the consolidation of the Maryland Electric Railway Company and the Baltimore and Annapolis Short Line, the latter at that time owning and operating a line, since electrified, between Baltimore and Annapolis—a distance by rail of twenty-two miles. The Maryland Electric Railways Company on September 15, 1906, executed a mortgage to secure an authorized issue of $8,000,000 of First Mortgage, 5%, 25 year Gold Sinking Fund Bonds, the same being a first lien upon the properties of such consolidated company. Thereupon the United Company entered into a contract with the Maryland Company under which the latter agreed to furnish funds for the purchase and construction of such property as the United Company might require, the property so acquired to be leased to the United Company at a rental of 6% per annum on the cost of the same. In addition the United Company agreed to pay, after March 30, 1910, 1½% per annum as a sinking fund,

and also to pay to a special sinking fund annually 7½% of the cost of equipment purchased with the bond proceeds until the equivalent of the full purchase price of the equipment had been paid. The United Company moreover agreed to pay all the cost of maintenance, operation, taxes, insurance, etc., and to purchase the property at the maturity of the bonds, or upon any default thereon, at a sum sufficient to retire such bonds. The Maryland Electric Railways Company continued to operate the Annapolis Short Line. At the date of the hearings in this case, there were $4,946,000 of the Maryland Electric Railways Company bonds outstanding in the hands of the public and $702,000 of the same in the treasury of the United Company, forming a part of its sinking fund securities.

Prior to the above arrangement with the Maryland Electric Railways Company, the United Company had leased from the Baltimore, Sparrows Point and Chesapeake Railway Company all the properties of such company and had guaranteed the principal and interest of the First Mortgage, 50 year, 4½% bonds of that Company amounting to $2,000,000, the whole amount of this issue being outstanding at the date of the hearings in this case.

In addition to the above obligations there were outstanding in the hands of the public at the date of the hearings in this case, the following securities of the Company:

Five Year, 5% gold notes	$1,222,000
" " Convertible 5% gold notes	1,528,000
" " " 6% " "	3,000,000
Bills payable	800,000
Total	$6,550,000

These notes were all issued with the consent and approval of this Commission, and the proceeds used for the refunding of outstanding obligations, the acquisition of property or for other proper corporate purposes of the Company, as provided by the Public Service Commission Law.

After deducting from the grand total of the above outstanding interest-bearing indebtedness the $3,710,000 of treasury and sinking-fund securities in the hands of the Company, it was found that the net outstanding interest-bearing indebtedness of the Company at the dates of the hearings in this case was $65,683,000, the outstanding common stock being, as above stated, $20,461,200 and of the preferred stock, $23,000, a grand total of $86,167,200 for the whole.

FAIR VALUE OF THE PROPERTY NOT AN ISSUE.

Section 30 of the Public Service Commission Law relating to valuations of property provides:

> "Every such valuation shall be so made and ascertained by the Commission that as far as possible it shall not disturb the value of the bonds of any of said corporations issued prior to the passage of this Act."

In the opinion of this Commission in the Matter of the Complaint of Davis Bacharch and others vs. The Consolidated Gas Electric Light and Power Company of Baltimore, decided January 13, 1913, P. S. C. Md. Vol. 4, p. 39 at 53-5, the Commission concurred in the opinion of its General Counsel, to the effect that this was a positive direction, binding upon the Commission, and based its order establishing rates upon the assumption that the outstanding bonded indebtedness of the Company at the time of the creation of the Commission in 1910 established the minmum fair value of the property for rate-making purposes as of that date. To this sum was added the amount of the bonds issued since the Commission was established and under its authority, these bonds representing actual expenditures for extensions and improvements, and thereby representing actual capital investments which the Commission in that case held unassailable.

The Commission, as at present constituted, expresses no opinion as to the legal effect of the above provisions of the Public Service Commission Law, and is not to be understood as conceding that in a case where the bonded indebtedness of a public utility is in excess of the fair

value of its property, the former shall be accepted as the minimum fair value of the property for rate-making purposes. Nevertheless this Commission fully recognizes the justice of the legislative intent that the actual value of the securities of a public utility outstanding in the hands of the public at the time of a rate-making inquiry should not be unduly prejudiced by any action of the Commission in the premises, whether such action be by way of arriving at the fair value of the property for rate-making purposes, or, more directly, by the actual fixing of rates for service.

This Commission's physical valuation of the property of the Railways Company has never been fully completed, and even if completed, would be of little, or no worth for rate-making purposes at the present time of abnormal property values and abnormal operating conditions.

As a matter of fact, the whole question of fair value of the Railways Company's property is of little or no relevancy in the present case, for the reason that the issues have been narrowed down by the Company's petition above referred to, by agreement of counsel, and by understanding between the Company and the Commission, that the sole issue involved is whether or not the increase of one cent in the Company's fares is reasonably required to enable the Company to render adequate service to the public, and yield to the owners of the property a return approximately equivalent to the return received under normal pre-war conditions.

QUESTIONS OF PUBLIC POLICY INVOLVED.

The above issue, and the acceptance of the same by this Commission as the real issue in the present case, involves grave and important questions of public policy.

(A) THE RIGHTS OF THE SECURITY HOLDERS.

It has been seen in the preceding statement of facts that the respondent Company has almost an absolute monopoly of the street railway business in the City of Baltimore and its immediate vicinity; that the Company is the outgrowth of the consolidation of a large number of previously more or less independent street railway

companies which formerly served this community, and the leasing of the properties of other companies, otherwise independent of the respondent Company; that the properties of said constituent companies were taken over by the consolidated company at valuations arrived at by agreements of the parties consummated long before the creation of the Public Service Commission of this State, and that the securities issued in exchange for such properties at valuations agreed upon nearly twenty years ago are outstanding in the aggregate of many millions of dollars in the hands of the public, who have invested therein upon the faith both of the property believed to be behind such securities and of the earning power of the combined railways system as a whole. Under such circumstances it would require no act of assembly to lead this Commission to the conclusion that the property rights of the holders of such securities should not lightly be impaired by any action of this Commission.

(B) IMPORTANCE OF THE RAILWAYS SYSTEM TO THE GENERAL PUBLIC.

In the course of a relatively few years the street railway has become one of the most important adjuncts to life in all thickly populated communities. With water, gas and electricity, it has become one of the prime necessities of life. Without it, business would come almost to a standstill, and social life in our cities and suburban communities would be most radically changed. So dependent have the people of our cities become upon the street railway, that an interruption of only an hour or so in the service, is almost instantly felt throughout the length and breadth of the community, and continuous bad or inadequate service is a thing which no community will long tolerate if redress of any kind can be found.

(C) OBLIGATIONS OF THE COMMISSION TO THE PUBLIC.

From the above reasons it follows that the prime obligation which any state regulatory body, such as a public service commission, owes to the public in connection with the property and affairs of a street railway corporation is, first, to see that the property of such corporation is

at all times so constructed, equiped and maintained as to enable those in charge of the same to render at all times adequate service to the public, and, second, to see that such character of service is at all times rendered.

The former proposition requires that the Company shall at all times be kept in such a condition, financially, that it can command investments in its property by the investing public, in order that necesary extensions to meet the demands of rapidly growing community may be made promptly when and as required, and that its roadbed, power houses and equipment may always be of a type and capacity to render adequate service economically and efficiently. There is no statutory law which can be resorted to in order to compel the investing public to invest its money in a public utility rather than in any other class of enterprise, and the only laws which can be appealed to are the natural laws of trade and commerce which lead men to invest their money where it may reasonably be expected to yield them a fair return for its use, and forbid the investment of money where there is no reasonable hope or expectation of such a return.

The obligations of a state regulatory body to see that those in charge of the affairs of a public utility render at all times adequate service to the public demands primarily that the company be permited to charge such rates for its service as will enable it to pay its operating expenses, including the maintenance of its property, its fixed charges, and a reasonable return upon the fair value of the investment. For if less than a reasonable return upon the investment is paid the owners of the property, they could not well be expected to continue the use of their money in the service of the public. Where it is questionable whether or not there is any equity in the investment over and above the bonded indebtedness the return should still be sufficient not only to meet the fixed charges themselves, but should be sufficiently in excess thereof to serve as a reasonable guarantee to the investing public that the company will at all times be in a position to meet such fixed charges promptly when and as due. Otherwise a relatively short season of poor business or abnormally heavy expenditures would result in default in the payment of interest upon the bonded in-

debtedness, and the instant destruction of the credit of the company with the probability of an early dissolution of the company itself.

Consequently it follows that a state regulatory body could do no greater harm to a community so entirely dependent upon the service of a street railway company as the public of Baltimore is dependent upon the service of the respondent Company, than to refuse to permit it to change such rates for its service as will enable it at all times both to command the investment of money necessary for the making of required extensions and continued maintenance of its property in efficient condition, and also to render such character of service as the needs of the community reasonably require. So to refuse would not only be to render it physically impossible for the company to render adequate service, but would also be to drive the company itself into a position of pecuniary decrepitude which would in the end result in bankruptcy and dissolution, after a long drawnout period of such inadequate service, during which the property and equipment would fall into a condition of disrepair which could only be corrected after the lapse of many years and the expenditure of many millions of dollars.

(D) PRIMARY OBLIGATION OF THE COMPANY TO THE PUBLIC

But neither the rights of the holders of the securities of a public utility, nor the fear of driving such utility into bankruptcy through the withholding of funds deemed necessary for its preservation, should ever be permitted by a public service commission to cause it to lose sight of the primary obligation of the utility to render adequate service to the public. This is an obligation which the utility assumes when it undertakes to serve the public of a given community, and becomes the more absolutely binding both in law and morals, when it pre-empts the entire field of service, and enjoys such an absolute monopoly in its chosen field as is the monopoly enjoyed by the respondent Company in Baltimore and its immediate vicinity.

(E) THE POLICY OF THIS COMMISSION

In conformity with these principles it has always been the polity of this Commission in its regulation of the affairs of public utilities made subject to its jurisdiction to allow such reasonable rates for their services, and to insist that in return for such reasonable rates the utilities shall render adequate service to the public dependent upon them for such service. And if, under such circumstances, a public utility cannot succeed in its chosen field, then it will be far better in the end both for its security holders and the general public, for it to be forced out of such field and required to give way to others who will be only too glad to enter the field and undertake to render adequate service once the original utility is out of the way.

STATUTORY LAW INVOLVED.

Section 11 of the Public Service Commission Law of this State provides as follows:

> "Every order of the Commission shall take effect at a time therein specified *and shall continue in force for a period therein designated* unless earlier modified or abrogated by the Commission, or unless such order be unauthorized by this Act, or be in violation of a provision of the Constitution of the State or of the United States."

Section 13 provides in part as follows:

> "All charges made or demanded by any such common carrier for the transportation of passengers * * shall be *just and reasonable,* and not more than allowed by law, *or by order of the Commission,* conformably with the law."

Section 23 provides in part as follows:

> "Whenever the Commission shall be of the opinion after a hearing, upon its own motion, or upon a complaint made as provided in this Act, that the rates, tolls, fares or charges * * by any common carrier * * are unjust, unreasonable * * *the Commission shall determine the just and reasonable*

rates, tolls, fares and charges to be thereafter observed and in force as the maximum to be charged for the service to be performed, and shall fix the same by order."

Section 31½ provides in part as follows:

"All acts or parts of acts heretofore passed and now existing, prescribing or limiting the price at which any * * * corporation subject to this Act may furnish, sell or dispose of its * * * produce or utility are hereby repealed, *it being the intent of this Act that the powers of the Commission herein created to ascertain the price of such * * product or utility as provided for herein, shall supersede all such Acts or parts of Acts aforesaid."*

Section 796 of the Baltimore City Charter provides in substance that the United Railways and Electric Company of Baltimore shall charge five cents and no more as a fare for the conveyance of each passenger over twelve years of age, and three cents, and no more for each child between the ages of four and twelve years, from any point on any of its lines to any other point on such lines within the city of Baltimore, with free transfers at all points of intersection with other lines not forming a route which would permit a passenger to return in the same general direction.

Section 2 of Chapter 82 of the Acts of 1918 provides in substance that all the provisions of the Baltimore City Charter shall be applicable to such portions of Baltimore County and Anne Arundel County as were annexed to and made a part of the City under that Act.

The above several provisions of the law gave rise to a variety of contentions during the course of the argument, all of which contentions will be hereinafter considered.

THE COMPANY'S NEED FOR INCREASED REVENUES.

That the Company is reasonably entitled under conditions at present existing to an increase of one cent in each of the fares specified in its schedule P. S. C. Md. No. 8, there would seem to be little or no question.

The exhibits show that during the years 1912 to 1917 inclusive, the average of which may fairly be taken as representing normal conditions, the Company earned over and above its operating expenses, taxes and maintenance expenses, including in the later years an annual appropriation to its depreciation reserve account of five per cent. of the gross revenue, an average of $3,659,609 available for the payment of fixed charges and dividends, any resulting balance going into the corporate surplus account. During the above six years such average net earnings amounted to 6.337% of the average funded debt of the Company, the yearly ratios ranging from 6.134% in 1917, as the lowest, to 6.731% in 1916, as the highest. During the above period the average fixed charges of the Company amounted to $2,810,807, thus leaving an average balance of $848,802 available for dividends and surplus. It will be noted that the above net earnings amounted to approximately one and one-third times the amount of the Company's fixed charges, a ratio by no means excessive in view of the desirability of upholding the credit of the Company, and in fact considerably less than that frequently demanded by reasonably conservative investors.

Assuming the above fairly to represent operating results, under normal pre-war conditions, the Company contented itself at the hearings with merely pointing out the effects which war increases in wages alone have upon its net earnings in the future, taking no account of any possible increases in the costs of materials and supplies over and above the actual costs of such during the twelve months ended September 30, 1918, in one instance, and October 31, 1918, in another.

Two exhibits were filed upon this theory. In the first the Company took the actual operating income for the year ended September 30, 1918, on the basis of the existing five cent fare, to wit: $11,351,019, and deducted therefrom the total of its actual maintenance and operating expenses during the year, $6,201,242, plus a correction for increased wages alone, not reflected in operating results during that year, $1,479,000, leaving a balance of $3,670,277. From this sum was deducted $1,198,790 paid for taxes during that year and $567,552 for depre-

ciation, leaving a balance of $1,903,935, to which was added non-operating income amounting to $100,101, yielding a total balance available for fixed charges and dividends of $2,004,036. Inasmuch as the fixed charges alone had amounted during the year to $3,047,151, this exhibit showed a deficit in interest of $1,043,115, meaning that upon the theory of this exhibit the Company would have had to exhaust its entire accumulated surplus and borrow funds in addition with which to pay its fixd charges in full had it been obliged to pay throughout the year the labor prices which were current at the end of that year. For further illustration the Company in this exhibit added to the above deficit of $1,043,115, the sum of $905,611, representing the average annual surplus earnings over fixed charges during the four years ended December 31, 1917, thus showing a total deficit in such earnings of $1,940,726 as compared with the preceding four years. The theory of this exhibit was that the Company could not reasonably expect its gross revenues during the year ending September 30, 1919, to be greater than during the year ended September 30, 1918, without a fare increase, and that the prices current for labor September 30, 1918, would remain practically constant during the ensuing twelve months.

In the second exhibit of this series, the Company undertook to prognosticate for the year ending October 31, 1919, upon the basis of the estimates of the Commission's Special Counsel of the number of revenue passengers to be carried during those twelve months as contained in the table set forth earlier in this opinion.

Upon this basis, and assuming that no increase in fares would be permitted, it was shown that the total passenger revenue would amount to $10,929,750. To this sum was added "other transportation revenue" and "other railway revenue" as actually received during the twelve months ended October 31, 1918, amounting to $303,847, there being no reason to assume that these items would be materially different during the next twelve months. From the sum of the above items, to wit: $11,233,597, there was deducted actual operating expenses for the twelve months ended October 31, 1918, $6,347,514, plus a correction for increased wages not yet

reflected in the above figures, $1,326,000 a total of $7,673,514, leaving a balance of $3,560,083. From this balance was deducted the taxes actually charged against earnings during the twelve months ended October 31, 1918, $1,213,413, and depreciation, 5% of gross operating expenses or $561,679, leaving a balance of $1,784,991 to which was added non-operating income amounting to $89,658, being the amount actually received during those twelve months, these computations yielding a total of $1,874,649, out of which to meet the fixed charges and dividends. The fixed charges for the ensuing year were computed upon the basis of twelve times the fixed charges for October, 1918, and amounted to $3,188,904, thus leaving a deficit in interest of $1,314,255. To this sum was added $905,611 representing the average annual surplus for the four years ended December 31, 1917, resulting in a total deficit in net earnings of $2,219,866 as compared with such previous years.

If the actual net earnings during the preceding four years had been disregarded over and above the amount of $818,488 representing the pre-war annual dividends upon the common stock, the deficit would still have been $2,132,703. Or if the average net earnings over fixed charges for the six years ended December 31, 1917, had been used instead of the average for four years only, the deficit would have been $2,163,057.

The above exhibits were designed primarily to demonstrate beyond any question that the Company was badly in need of increased revenues. At the same time they demonstrated quite convincingly that the amount of increased revenues required if the Company were to be kept in the future upon substantially its pre-war basis as to earnings, was approximately the amount which might reasonably be expected to be yielded by the one cent increase in the Company's fares as set forth in its revised schedule P. S. C. Md. No. 8.

Upon the estimated basis of 224,200,000 revenue passengers during the year ending October 31, 1919, as originally made by the Commission's Special Counsel, and accepted by the Company for purposes of illustration, the increased revenues from the additional one cent fare would amount to $2,242,000, or but a few thousand dol-

lars more than sufficient to pay the Company's operating and maintenance expenses, taxes, fixed charges and the average annual surplus earned during the four years prior to December 31, 1917.

Both at the hearings and in the arguments made at the conclusion thereof, counsel for the Company contended that the estimates for the Commission's Special Counsel as to the number of passengers likely to be carried during the coming year were excessive, both in that they failed to take sufficiently into account the teniency of the increased fare to diminish traffic, and in that they failed to take sufficiently into account the falling off in traffic which would result by the closing down of the munition plants and other war industries which would cease with the coming of peace. Their estimate of the effect of this alleged excess in estimate was $300,000. They also contended that the cost of additional service which the Company would be required to give during the ensuing year would be not less than $400,000 more, and that it was questionable under all the circumstances whether the Company would be able, even with the increased fares, to earn more during the ensuing twelve months than an amount sufficient to pay all its expenses of operation and maintenance and meet its fixed charges.

Granting that there may be merit in the above contentions, it is also at least equally probable that there may be, during the ensuing twelve months, a substantial falling off in the cost of labor and materials in comparison with the peak prices which were made the basis of the above estimates.

The relative or net effects of the various counteracting tendencies resulting both from the increases in the Company's rates of fares and from the cessation of hostilities, it is impossible for this Commission to forecast at this time with any reasonable degree of assurance. Time and experience alone will demonstrate the correctness or incorrectness of the various assumptions made in the exhibits referred to, and in the arguments of counsel.

Meanwhile the Commission is satisfied from the evidence before it, only a very small portion of which has

been referred to in this opinion, that if the respondent Company is to be put in a position to render adequate service to the people of this community, it must have a substantial increase in its revenues, and that the amount of such increase required in the immediate future is approximately the amount which may reasonably be anticipated to be yielded by the increase of one cent in practically all the Company's fares.

Ever since it developed early in the course of the hearings that there was such a need for increased revenues, the Commission has given much thought to the possibility of requiring the Company to adopt a form of ticket or check to be sold in small quantities at a reduced rate. The following table shows the extent to which a variety of such reductions would have upon the Company's gross revenues upon the assumption that all passengers would use such tickets. This assumption would have to be modified by the further assumption that relatively few would use the tickets sold at a slight reduction while relatively a great many more would use them if sold at a greater reduction.

				Decrease in Revenue.
10	tickets	for	55c	$1,120,000
9	"	"	50c	994,560
8	"	"	45c	819,840
7	"	"	40c	540,640
6	"	"	35c	371,840

In view of the very great reductions in the Company's revenues which would result from the sale of tickets at any of the above prices, as compared with the relatively small saving to the individual user of such tickets, and in further view of the Company's apparent need for the whole of the increased revenues which are likely to result in the flat increase of one cent in each of its fares, the Commission has concluded that it would be most unwise at this time to order the sale of tickets in bulk at reduced rates.

The Company will be required by the Commission's order to make regular monthly reports of its operating results under the new rates effective October 1, 1918,

and if it appears at any time that a reduction of less than the full one cent increase can be properly required, such reduction will be made through the sale of tickets in small quantities at such prices as may be deemed expedient from time to time.

Meanwhile public convenience can be greatly promoted by the sale of tickets or fare checks in bulk for multiples of six cents by the conductors on the cars, in addition to their sale at the offices of the Company, banks, department stores, etc., as at present conducted, and the Company will be expected to perfect a plan in the near future by which this will be done.

CONDITIONS OF ORDER.

Special Counsel for the Commission who was also representing the public, contended that the order of the Commission prescribing the rates of fare hereafter to be charged by the respondent Company should be limited to a definite period as provided by Section 11 of the Public Service Commission Law and suggested that such period be one year, after which the fare should be restored to five cents, unless the Commission should conclude at the expiration of that period that the service rendered by the Company has been reasonably adequate throughout the same, and that a continuance of a charge in excess of five cents was reasonably necessary to insure the continuance of such reasonably adequate service in future. Counsel for the Company, on the other hand, contended that the increased fare should be permitted preferably for an indeterminate period, or, if that were not feasible under the law, for a definite period longer than one year, subject to a re-opening of the case at any time by the Commission and a reduction of the fare in the light of the evidence then adduced.

In passing upon the merits of these respective contentions we must bear in mind the statements contained in the Company's petition of July 19, 1918, for such increase, as set out at length in the beginning of this opinion, and also the statements made in the letter of the Company transmitting its revised schedule P. S. C. Md. No. 8, as set out on page four of this opinion. By these statements the Company expressly disclaimed "any in-

tention of establishing by this proceeding any permanent rate of fare," and asked only "for relief purely as a war emergency and during the period of war conditions," further stating that its sole purpose was "to preserve its pre-war efficiency, and to prevent, as far as possible, injury to its credit and to its organization and the deterioration of its plant" which would result without such increase in its fares.

Since the filing of such petition and revised schedule the war has virtually terminated, but the reason underlying the application for increased fares is also applicable to a reasonable period of readjustment following the war. How long that period of readjustment will continue it is impossible for this Commission to determine, but bearing in mind the nature and avowed objects of the application, it seems to this Commission most desirable that the right to charge such incrased fares should be limited to a fixed, definite period of one year, subject to the power of the Commission to extend the same in whole or in part for a further period at the end of that year if such a course is then deemed wise and expedient. The readjustment which is to follow the war will not come all at once. It will in all probability be a process extending over a period of years. In some respects it will probably come within the year, in others, not for many years. Meanwhile it is hardly possible that operating costs will remain at the high figures which were made the basis of the Company's exhibits in this case, and it is more than probable that by the end of the year the Company will be able, with proper and efficient management to meet all its corporate requiremnts with a rate of fare materially less than six cents, even though in excess of five. Under such circumstances it would seem desirable that at the end of the year the burden should be upon the Company to establish its right to a continuance of an increased fare rather than that such burden should be upon the public or upon this Commission to demonstrate that any portion of such increased fare is not then necessary.

Moreover, the theory of the Commission's Special Counsel that a continuance of an increase in fares at the end of the year should be made conditional upon the

rendition of reasonably adequate service in the meantime, is eminently sound and just under the peculiar circumstances of this particular case.

It would serve no sufficiently good purpose for this Commission at this time and in this connection, to enter into a recital of the defections of the respondent Company with respect to its service to the public.

The Company's repeated violations of the orders of this Commission heretofore passed with respect to service, and of this Commission's rules adopted at the suggestion of the Company itself, and after its promises to adhere to and abide by the same, coupled with the fact that for a long period in the past its service has been in many respects inadequate and unsatisfactory to the public, have all led this Commission to the conclusion that those in control of the affairs of the Company have not been in the past fully alive to their plain duty to the public in this respect. This is a conclusion which has not been formed since the United States entered the European War, but was reached long before that war began. It is a conclusion, moreover, which has been modified rather than strengthened during the period our country has felt acutely the effects of war, and is therefore not to be understood as referring exclusively to war conditions.

The authorities of highest repute are practically unanimous to the effect that the public should not be required to pay for a public service more than such service is fairly and reasonably worth, and the cost of rendering that service is merely one of the evidences of the fair worth of the same. This Commission has concluded from the facts before it in this case that the fair worth of reasonably adequate street railway service to the community served by the respondent Company, and under existing conditions, is six cents, as the basic rate for adults, and four cents as the basic rate for children between four and twelve years of age.

By our order passed in this case, we are about to take the Company at its word, that with a rate of six cents it can render the public of this community reasonably adequate service during the ensuing year, and will permit

it to charge that rate. If it does not comply with that undertaking, there can certainly be no good reason why such increased rate should be continued thereafter, unless by that time conditions have materially changed for the worse from an operating standpoint, rather than for the better.

Meanwhile, during this period of experimentation with such increased fares, the Company should be permitted to work out its own plans for the improvement of its service, with as little interference with such plans on the part of this Commission as may be found reasonably practicable in view of this Commission's continuing obligation to the public with respect to the service of this Company. In determining whether or not the service has been reasonably adequate during the period throughout which the increased fares will be permitted, this Commission will be governed largely by the standards of service embodied in its rules heretofore adopted with the acquiescence of the respondent Company, but will not be unmindful of any abnormal conditions due to the war, which may extend into the period of readjustment about to follow. During this period, moreover, the Commission will continue its present system of making checks of the traffic over the Company's lines, and will welcome expressions from the public as to the character of the service being rendered by the Company, whether the same be deemed good or bad. Except where complaints require action upon the part of the Commission, they will be filed for reference at the end of the period fixed for the continuance of such increased charges.

Counsel for the Company contended in the course of his argument that such limitations upon the right to charge such increased fares would seriously militate against the credit of the Company. This Commission is fully mindful of the desirability of upholding the credit of all public utilities subject to its jurisdiction to the fullest extent consistent with justice to the general public. But it is also fully mindful of the ultimate dangers of a false credit bolstered up by orders establishing rates for services which are not justified by the fair worth of the service rendered.

This Commission has given the investing public, in a

number of instances in the past ample assurances that so long as public utilities subject to its jurisdiction render the public reasonably adequate service, they shall be permitted to charge for that service the fair and reasonable worth thereof. And it is that same assurance that we are endeavoring by this opinion and our order passed pursuant thereto, to give those who may in future be minded to invest their money in the securities of the respondent Company. But beyond that, this Commission would not wish to be understood as going, and it conceives it to be its duty to the investing as well as to the general public to declare that it will under no circumstances permit any public utility to charge the public an unreasonable price for inadequate service.

In passing upon the reasonable adequacy of service it has not been this Commission's practice in the past, nor is its intention in the future, to be unduly captious or over-critical in arriving at its conclusions. This Commission fully realizes that there cannot well be any fixed and arbitrary standard of street railway service applicable to all conditions and under all circumstances. Due allowances have always been made for lapses in efficiency of service due to abnormal conditions and occasions, and it is only in cases where it had been shown that the Company has evinced a clear disregard for the ordinary rights and convenience of the public that this Commission has declared its service inadequate. With the increase in fares which will be permitted by our order in this case, it is not to be expected that the Commission will be as tolerant of the defections of the Company with respect to service as it has been in the past, when it was realized that the Company was operating in the face of difficulties which were enhanced by its lack of sufficient funds to render the highest grade of service. The Company will be expected to make the most efficient use reasonably possible of every dollar of revenue received during the period the increased fare is permitted to remain in effect.

THE SKIP-STOP PLAN.

On April 15, 1917, the respondent Company inaugurated upon its North Avenue and Edmondson Avenue lines a new plan of operation, generally known as the "Skip-Stop" plan, under which system of operation the

cars skipped each alternate street crossing, there being certain exceptions to the general rule, particularly as respects transit crossings. Owing to the subsequent rerouting of some of the cars on these lines the "Skip-Stop" plan was extended to portions of the Garrison Boulevard line and the Liberty Heights branch of the Linden Avenue line.

Directly after this scheme was adopted the Commission began receiving communications respecting the new system of operation, some of which condemned while others praised the plan. By Order No. 3832 entered on September 10, 1917, (P. S. C. Md. Reports, Vol. VIII, pp. 244-247) the Commission established rules to be observed by the Company in respect to the method of procedure this Commission in the determination of street intersections at which the railways company should not be required to stop its cars to take on or discharge passengers.

After the plan had been in effect several months the Commission, upon its own motion, and in order fully to develop the controversy, filed a complaint respecting the "Skip-Stop" plan, and thereafter held hearings extending over several days, at which opportunity was afforded all persons desiring to testify either on behalf of or against the "Skip-Stop" plan of operations, either as a whole or with respect to particular stops which were skipped under the system. On October 6th the Commission filed its opinion (Vol. VIII, pp. 275-280), wherein it held that the "Skip-Stop" plan of operation as theretofore practiced by the Railway Company was unjust and unreasonable, though the Commission did not require the Company to restore all of the stops formerly in effect. By order No. 3887 entered on the same day, (p. 281) the Commission directed the respondent Company to restore a dozen or more stops which it had abandoned under the aforesaid plan of operation and by subsequent orders required the restoration of still other stops.

Thereafter the railways company began formulating plans looking to the adoption of a "Staggered-Skip-Stop" plan of operation on certain of its lines, under which scheme cars stop to take on and let off passengers at alternate street crossings in both directions. That is to say, if the cars stop at a given corner when on the west-bound

trip, that corner is skipped on the east-bound trip, subject to the same exceptions respecting transit crossings, etc., as in the case of the original "Skip-Stop" plan, the object of the "Staggered-Skip-Stop" plan being to equalize, as far as possible, the inconvenience to the Company's patrons. In April last the co-operation of this Commission was sought by the Special War Committee of the National Asssociation of Railway and Utility Commissioners, by the Conservation Division of the United States Fuel Administration and by the Fuel Administrator of Maryland in the matter of conservation of fuel by the respondent Company, it being represented that a great saving of fuel would result were said Company permitted to put into effect the "Staggered-Skip-Stop" plan of operation upon all of its lines. The Commission on April 9, 1918, entered its Order No. 4262 by which the Railways Company was authorized and requested to adopt and put into operation at as early a date as practicable the "Staggered-Skip-Stop" plan of operation. By the terms of this order the Commission reserved unto itself the right, at any time thereafter, to modify or change any particular application thereof when such particular application was found to be an unreasonable exercise of the authority granted the Railways Company by the said order. By the same order the rules of procedure established by Order No. 3832 aforesaid were modified to meet the new conditions. From time to time thereafter the Commission has entered orders requiring the restoration of specific stops when the restoration of such stops was found to be necessary in the interest of the public service, but the "Staggered-Skip-Stop" plan of operation as a whole remained in effect on all lines of the Company until December 23, 1918, when it was abandoned pursuant to an oral order of the Commission given the officers of the Company during the course of the hearings in this case.

During such hearings the plan had been made the subject of attack by counsel for the public, and an opportunity was given the general public to make objections to its abandonment. No such objections were made, and the President of the Company, when on the stand declared that the plan as such had been a failure in that it had not saved the money it had been expected to save, that it had not resulted in any noticeable saving in the running time

of the cars, and that the small amount of money and time saved by the plan were far more than outweighed by the general inconvenience to the public resulting therefrom. The Commission concurs in these conclusions, and a formal order will be passed in the appropriate case abolishing the same.

ZONE EXTENSIONS TO NEW CITY LIMITS.

During the course of the hearings it was contended by counsel for certain residents of North Baltimore that the legal effect of that portion of Section 2 of Chapter 82 of the Acts of 1918, providing that all existing provisions of the Baltimore City Charter should be applicable to such portions of Baltimore and Anne Arundel Counties as were annexed to Baltimore City by that Act, was to extend the provisions of Section 796 of the City Charter prescribing certain fares within the old limits of the City to such annexed portions of Baltimore and Anne Arundel Counties, and thereby make uniform the fares within the limites of Baltimore City as enlarged by such Act. As hereinbefore stated, this Commission had been advised by its General Counsel October 2, 1918, that the effect of the enactment of the Public Service Commission Law was to repeal that portion of Section 796 of the City Charter above referred to. When the question was raised in a somewhat new form during the course of the argument, it was again referred to the General Counsel, who advised the Commission in his opinion of December 31, 1918, that by the several sections of the Public Service Commission law hereinbefore referred to, the whole matter of the rates of fare proper to be charged by the respondent Company has been committed by the legislature in the first instance to determination by this Commission, subject to review by the courts as in said Law provided. The Commission concurs in such opinions.

This Commission is not prepared at this time to express any final conclusion as to the extension of existing fare zones, for the reason that this question was not fully presented to it at the hearings in this case, and that an extenison of such zones at the present time and under existing conditions would so far reduce the gross earnings of the respondent Company as to render the increase of one

cent in the fares over existing lines, entirely inadequate to meet the operating requirements of the Company.

The general question of fare zones should be made the subject of an independent study, and this cannot be done until the effect of the increased fares, on the basis of the existing zones, has been demonstrated by experience over a reasonable period.

For the present no order will be passed upon this point.

THE CURTIS BAY LINE.

The Curtis Bay Line of the respondent Company begins at the intersection of Baltimore and Light Streets, in the heart of the city, and runs south along Light Street to a point near the northern end of the Hanover Street bridge, where it is diverted to Hanover Street and crosses the Middle Branch of the Patapsco River over such bridge into what was formerly Anne Arundel County and is now a part of Baltimore City. Then it passes to the town of Brooklyn, which it leaves by way of Patapsco Avenue and passes into the town of South Baltimore, its southern terminus, a distance of 3.77 miles beyond the old city limits. At Stone House Cove, a point about midway between Brooklyn and South Baltimore, there is a junction, at which at present a jerk-water line runs easterly to East Brooklyn and Fairfield, a thriving community located on the west bank of the main body of the Patapsco River, East Brooklyn also fronting on Curtis Bay. The section served by this jerk-water line is occupied mainly by large manufacturing enterprises employing thousands of laborers, some of the latter having their homes in the immediate vicinity, but the great bulk of the same residing in Baltimore City.

Prior to the filing of the respondent Company's revised schedule, P. S. C. Md. No. 8, effective October 1, 1918, it was the practice of the Company to issue free transfers between its other lines and that portion of the Curtis Bay line extending from Baltimore and Light Streets on the north to the southern end of the Hanover Street Bridge (south bank of the Middle Branch of the Patapsco) on the south, and then to charge an extra full fare of five cents on the remainder of the line south of the latter point. In the alternative it was the practice of the Company to

issue a cash transfer for three cents from either section of this line to the other, where a cash fare had originally been paid on the first. Transfer from the main line to the jerk-water line running to Fairfield was without charge in either event.

Revised schedule, P. S. C. Md. No. 8, eliminated the above three cent cash transfer, with the result that the fare to Brooklyn or Fairfield has been increased from eight to twelve cents.

Without going further into the details of this rather complicated situation, and without undertaking at this time to pass upon the reasonableness or unreasonableness of the fare as it originally stood, the Commission has concluded, in view of the avowed intention of the Company to increase its existing fares but one cent in any instance, that it should hereafter be required to issue cash transfers on said line for four cents instead of three cents previously charged, thus making the full fare ten cents instead of eight as heretofore and twelve as now.

The evidence upon this branch of the case also showed a glaring case of inadequacy of service to the Fairfield District. Three ways were pointed out by which this service could be materially improved without any very great expenses, (1) by side tracking some of the Curtis Bay main line cars at Stone House Cove; (2) by completing the Fairfield extension as originally contemplated in the form of a complete loop over one or the other of the routes suggested, and putting additional cars thereon, or (3) by installing a series of turn-out switches on the existing jerk-water line pending the completion of such loop, and running additional cars over the same. Whichever of these plans the Company may deem it proper and expedient to adopt, the service must be improved within the immediate future.

While the complaint of the Fairfield patrons was heard with the main complaint as a matter of convenience, it is deemed advisable by the Commission to dispose of the same for the present by a separate order.

An order upon this branch of the case will be duly passed pursuant to this opinion.

RECENT STEPS LOOKING TO IMPROVED SERVICE.

Something over a year ago the respondent Company employed the firm of A. L. Drum & Company, Consulting and Construction Engineers, of Chicago, to come to this city and make a complete survey of the situation with a view of advising the management of as to the propriety of re-routing certain of its lines in order to diminish as far as reasonably possible the rapidly growing congestion of traffic in the central business portion of the city. The investigation of this form covered a considerable period and most of the proposed re-routing has been accomplished, with beneficial results which will no doubt be more evident as time goes on.

More recently the respondent Company has employed Day & Zimmerman, Inc., Engineers of Philadelphia, for the purpose of making an exhaustive study of traffic conditions generally over the entire system and advising the management in the premises. This latter work has not yet progressed far enough for this Commission to speak with any degree of positiveness as to its probable effect upon the service of the Company, but it is nevertheless encouraging to note that the Company is availing itself of expert service of this character in attempting to solve the problems of service which confront it.

It has been largely in view of this attitude upon the part of the management of the Company toward outsisde advice and assistance in the comparatively recent past, that this Commission has been so sparing in its criticism of the service which has heretofore been rendered, and it is sincerely hoped, for the sake of both the Company and the public, that such attitude will continue to prevail in the future.

An order will be passed embodying the principal conclusions embodied in the aforegoing opinion.

ORDER NO. 4608.

Before the Public Service Commission of Maryland.

Case No. 1568.

In the Matter of the Application of The United Railways and Electric Company of Baltimore for permission to make a uniform increase of one cent in cash fares heretofore charged.

Before the Public Service Commission of Maryland.

Case No. 1583.

In the Matter of the Complaint of The Public Service Commission of Maryland.

Vs.

The United Railways and Electric Company of Baltimore, with respect to the fairness and reasonableness of its proposed General Increase in its Passenger Rates.

Pursuant to the conclusions reached in the aforegoing opinion, it is ORDERED, this 7th day of January, 1919, by the Public Service Commission of Maryland:

1. That from and after this date and until December 31, 1919, and for no longer, unles such period be extended for a further period as hereinafter provided, or this order be earlier modified or abrogated by further order of this Commission, the United Railways and Electric Company of Baltimore shall be permitted to charge and collect for the transportation of persons over its several street railway lines, in Baltimore City and vicinity, the following rates, fares and charges, to wit:

(*a*) Six cents fare for the conveyance of each passenger over twelve years of age, and four cents for each child between the ages of four and twelve years, on any of its lines between the points designated under the first general caption in its schedule P. S. C. Md., No. 8, filed with this Commission August 28, 1918, effective October 1, 1918, or between intermediate points, in either direction, on any of such lines; except in the case of its Curtis Bay line, in which case the fare to be charged shall be modified under the conditions set forth in a separate order of this Commission passed on this date:

(*b*) Full fare and half fare when paid by continuous trip tickets, on the lines and between the points on the Company's Gorsuch Avenue, East Monument Street (Orangeville), Third and 8th Streets, Union Avenue, South Charles Street, Walbrook—Hillsdale, Shore Line and Ferry Bar Lines, as designated in said schedule P. S. C. Md. No. 8, otherwise the regular fare to be collected between the points so designated;

(*c*) Four and one-half cent when paid by commutation tickets sold for use on lines operating over more than one fare zone between the points so designated in the Schedule P. S. C. Md., No. 8, aforesaid, and five cents when paid by commutation tickets sold for use on lines operating over more than one fare zone between the points so designated in said schedule, said commutation tickets to be sold in the maner and subject to the conditions set forth in said schedule with respect thereto.

(*d*) Four and one-half cents between Sparrows Point and Highlandtown when paid by employee's tickets from 20-trip books sold in lots to the Maryland Steel Company for distribution; five cents between Dundalk and city points, when paid by strip tickets sold in lots to the Central Foundry Company for distribution; and two and one-half cents on the Lakeside line when paid by tickets from 200-trip books sold to the landowners along such line, all such tickets to be subject to the conditions printed thereon and to the rules of the Company governing the use thereof, the full fare in each of said cases otherwise to be paid.

2. That from and after the hour of midnight on the 31st of December, 1919, said Company's right and privi-

lege to charge and collect the increased fares herein authorized to be charged and collected, shall cease and determine, and said Company shall thereafter be permitted to charge no fares in excess of those charged by it on September 30, 1918, unless this Commision shall in the meantime, by its order in writing, for such cause as may then seem to it, and be in law, good and sufficient, authorize said Company to charge fares in excess of those which were in effect September 30, 1918;

3. That so soon after the date of this order as may be reasonably practicable, and convenient, and in no event later than January 31st, 1919, said Company shall furnish to this Commission accurate and complete statements under oath, and in convenient form, setting forth the number of revenue and transfer passengers carried, and the number of car-miles operated, the cash receipts from operation and other sources, and the operating and other expenditures of the Company, all set forth in the manner prescribed by the rules of this Commission for accounting by street railway companies, for the calendar months of October, November and December, 1918, respectively; and thereafter, so soon as may be reasonably practicable and convenient after the end of each calendar month during the year 1919, and in no event later than the last day of the next succeeding calendar month, said Company shall furnish this Commission a complete statement as aforesaid covering the operation of the Company during the next preceding month;

4. That the right of the respondent Company to charge and collect the fares in this order prescribed shall be held subject at all times during the period covered by such order, or any extension thereof which may hereafter be granted as aforesaid, to the right and power of this Commission to reopen this case in the light of the facts disclosed by the monthly reports aforesaid, or of other facts otherwise coming to the attention of this Commission and modify the rates of fare by this order authorized to be charged and collected by the respondent Company;

And be it further ORDERED, that a copy of this order be forthwith served upon the proper officers of the respondent, the United Railways and Electric Company of

Baltimore, and that said Company, within ten days from the date of the service of such copy, advise this Commission in writing whether or not it will accept and abide by the same.

ALBERT G. TOWERS,
JNO. MILTON REIFSNIDER,
JAMES C. LEGG,
Commissioners.

(B)

CASE NO. 1682, OPINION FILED SEPTEMBER 30, 1919, AND ORDER NO. 5120.

PUBLIC SERVICE COMMISSION OF MARYLAND.

OPINION.

Before the Public Service Commission of Maryland.

Case No. 1682.

In the Matter of the Petition of The United Railways and Electric Company of Baltimore for a Modification of Certain Orders, Now in Force, Fixing the Rates of Fare to Be Charged by Said Company and for Permission to File, Publish and Put in Effect a New Schedule of Rates of Fare, Increasing Existing Rates, as Set Forth in This Petition.

Appearances:

Joseph C. France, Esq., and William H. Maltbie, Esq., representing the United Railways and Electric Company of Baltimore;

Joseph S. Goldsmith, Esq., People's Counsel, and

Osborne I. Yellott, Special Counsel, both representing the general public;

James J. McNamara, Esq., Counsel for the Federation of Labor;

S. S. Field, Esq., City Solicitor (by printed brief only), representing the Board of Estimates of Baltimore City.

By the Commission. Filed September 30th, 1919.

STATEMENT OF PROCEEDINGS.

On July 19th, 1918, The United Railways and Electric Company of Baltimore filed its application for an increased rate of fare from five to six cents and a uniform increase of one cent in the case of children between the ages of four and twelve years and the users of commutation books. In its petition the Company alleged in substance that by reason of war conditions it was no longer possible to render adequate service to the public at the existing rates of fare. It also expressly disclaimed any intention to establish by the proceeding any permanent rate of fare, stating that it asked for relief purely as a war emergency measure and during the period of war conditions, solely for the purpose of preserving its pre-war efficiency and to prevent, as far as possible, injury to its credit and to its organization and the deterioration of its plant, which would otherwise result. It further stated that "it is not intended that any part of the increased revenue hereby sought should increase the margin of profit which the Company had heretofore earned."

Subsequently, without waiting for the Commission to act upon this application, the Company, acting under Section 15 of the Public Service Commission Law filed its Schedule "P. S. C. Md. No. 8" effective October 1st, 1918, in which it provided for a flat increase of one cent in each of its existing adult, children and commutation fares.

On September 18th, 1918, the Commission, of its own motion, filed a complaint alleging that the proposed increases in fares as set forth in the above revised schedule were "excessive, unjust, unfair and unreasonable."

The Company's application of July 19th, 1918 (Case No. 1568), and the Commission's complaint (Case No. 1583) were subsequently consolidated and came to hearing November 18th, 1918. The hearing adjourned on that date until December 2nd, on which date the hearings were resumed and continued until December 19th.

On January 7th, 1919, the Commission filed its opinion in these two cases, the same being accompanied by its Order No. 4608 of that date prescribing a six-cent fare for the conveyance of each passenger over twelve years of age and four cents for each child between the ages of four and twelve years, with substantially equivalent increases in the case of other special and commutation rates.

By the express terms of Order No. 4608 the rates therein prescribed were to become effective from and after January 7th, 1919, and continue "until December 31st, 1919, and for no longer, unless such period be extended for a further period as hereinafter provided, or this order be earlier modified or abrogated by further order of this Commission." The order further provided in this connection, as follows:

> "2. That from and after the hour of midnight on the 31st day of December, 1919, said Company's right and privilege to charge and collect the increased fares herein authorized to be charged and collected shall cease and determine, and said Company shall thereafter be permitted to charge no fares in excess of those charged by it on September 30th, 1918, unless this Commission shall in the meantime, by its order in writing, for such cause as may then seem to it, and be in law, good and sufficient, authorize said Company to charge fares in excess of those which were in effect September 30th, 1918;
>
> "3. That so soon after the date of this order as may be reasonably practicable and convenient, and in no event later than January 31st, 1919, said Company shall furnish to this Commission accurate and complete statements under oath, and in convenient form, setting forth the number of revenue and transfer passengers carried, and the number of car-miles

operated, the cash receipts from operation and other sources, and the operating and other expenditures of the Company, all set forth in the manner prescribed by the rules of this Commission for accounting by street railway companies, for the calendar months of October, November and December, 1918, respectively; and thereafter, so soon as may be reasonably practicable and convenient after the end of such calendar month during the year 1919, and in no event later than the last day of the next succeeding calendar month, said Company shall furnish this Commission a complete statement as aforesaid covering the operations of the Company during the next preceding month;

"4. That the right of the respondent Company to charge and collect the fares in this order prescribed shall be held, subject at all times during the period covered by such order, or any extension Thereof which may hereafter be granted as aforesaid, to the right and power of this Commission to reopen this case in the light of the facts disclosed by the monthly reports, aforesaid, or of other facts otherwise coming to the attention of this Commission and modify the rates of fare by this order authorized to be charged and collected by the respondent Company."

Meanwhile the rates of fare prescribed in the Company's revised schedule "P. S. C. Md. No. 8" had become effective October 1st, 1918, as provided in such schedule.

On May 23rd, 1919, seven months and twenty-three days after the rates so prescribed became effective, and a little over seven months before the date set for their termination unless further extended by the Commission as provided in said Order No. 4608, the Company filed its petition alleging that while its passenger traffic had continued with no diminution since the cessation of hostilities in the early part of November, 1918, and its gross revenues had increased, nevertheless, by reason of its increased service at war wages and costs, and increased cost in operating expenses and maintenance, the Company since the first of October, 1918, when the additional

fare became effective, to April 1st, 1919, had accumulated a deficit of $167,088.90 as to its interest charges and a deficit of $619,894.90 as to its pre-war surplus and interest, and asked that the Commission's Order No. 4608 of January 7th, 1919, be modified to increase the base rate from six cents to six and one-fourth cents adult fare (four tickets for twenty-five cents or multiple thereof, when paid for in tickets), or seven cents for a single cash fare, with proportionate increase in all other rates except children's fares, which the Company suggested should remain unchanged.

This application came to be heard August 7th, 1919, the hearings and arguments consuming eighteen days and being concluded September 5th, 1919.

Meanwhile the Company had voluntarily entered into an agreement with its employees, under which agreement wages and salaries were materially increased, the Company's estimate of the aggregate of these increases being $805,524 per year. Inasmuch as the estimates both of the Company and of counsel representing the public had been prepared before this wage increase was made, and it was not practicable to redraft them at that late date, there was no official mention of such increase until near the conclusion of the hearings, when it was suggested that proper allowances be made therefor in the exhibits as originally prepared. The Company also filed additional exhibits based on the inclusion of such wage increases, and contended that an increase of fares from six to seven cents, with four tickets for twenty-five cents, would not suffice to enable it to render adequate service and meet its corporate requirements, including such wage increase, and that for these purposes a fare of ten cents would be required, with two tickets for fifteen cents. It was estimated by the Company's witness, Mr. John E. Zimmerman, of the firm of Day & Zimmerman of Philadelphia, that with the base rate at ten cents, from ninety to ninety-nine per cent. of the Company's patrons would use tickets at the reduced rate of seven and one-half cents each. Subsequently it was suggested that a base rate of eight cents, with tickets at the rate of seven and one-half cents, would produce substantially the same result and would be satisfactory to the Company.

On behalf of the public it was contended that with the introduction of proper and possible economies a base rate of seven cents, with four tickets for twenty-five cents, or six and a quarter cents each, would yield the Company a sufficient net operating income to enable it to render adequate service and at the same time meet all its corporate requirements. Representatives of the Federation of Labor contended that there should be no further increase over the existing base rate of six cents; and there were petitions filed in the case asking the Commission to reduce the base rate to the former rate of five cents.

At the date of the conclusion of the argument the Company's operating figures for the month of August, 1919, were not available, but have since been furnished the Commission. Inasmuch as they were furnished in compliance with Order No. 4608 above referred to, the figures for August will be used in this opinion along with the other figures and data which were given in evidence at the hearings. It is important to note in connection with these August figures that the wage increase above referred to became effective August 17th, 1919, and that the effect of such wage increase is therefore reflected in part in the figures for that month.

EFFECT OF FORMER INCREASE.

In its opinion in the Six-Cent Fare Case this Commission estimated that the one-cent increase provided for in its Order No. 4608 would yield the Company approximately $2,240,000 additional gross revenue.

It was shown in that case that the Company's average net earnings from 1912 to 1917, inclusive, after the payment of operating and maintenance expenses, depreciation allowances, taxes and fixed charges, had been $848,802, this sum having been available for dividends and surplus during that period.

It was also shown that in view solely of the higher wage scales prevailing at the date of our order, and without any regard whatever to the higher price of materials and supplies, the operations of the Company under the exist-

ing five-cent fare would result in a deficit of $2,163,057 for the ensuing year as compared with the above pre-war period.

The Commission concluded in that case that "if the respondent Company is to be put in a position to render adequate service to the people of this community, it must have a substantial increase in its revenues, and that the amount of such increase required in the immediate future is approximately the amount which may reasonably be anticipated to be yielded by the increase of one cent in practically all the Company's fares."

It will be noted that the Commission did not, in this opinion, commit itself absolutely to the proposition that the Company should be permitted, at all hazards, to increases in fares sufficient to yield its full and exact pre-war surplus. It is true, the computations were made upon that basis, but these computations took account only of increased labor costs, and ignored entirely increased costs of materials, the Company itself having elected this method of presenting its case, and having asked only for an increase of one cent in its fares to meet this additional expense of labor.

Notwithstanding the fact that for these reasons the six-cent fare was not designed to yield the Company its full pre-war surplus, it will nevertheless prove interesting and helpful to see how far this one-cent increase has fallen short of yielding such pre-war surplus during the eleven months from October 1st, 1918, to August 31st, 1919, the latest date for which operating figures are available.

The Commission's estimate in the former case that the increase in fare from five to six cents would yield the Company increased gross revenue of $2,240,000 during the year was upon the assumption that the Company would transport during that year 224,000,000 revenue passengers, this figure having been the estimate of the Commission's Special Counsel, and the Company's representatives having contended that such estimate was excessive.

The following table shows actual results as compared with such estimate:

TABLE I.

REVENUE PASSENGERS.

(Actual and Estimated)

1918	*Estimated.*	*Actual*
November	19,250,000	18,642,833
December	18,750,000	19,402,443
Total Bal. 1918	38,000,000	38,045,276
1919		
January	17,500,000	18,771,764
February	16,500,000	17,540,547
March	18,000,000	19,613,464
April	18,000,000	19,711,271
May	19,000,000	21,260,540
June	19,500,000	21,021,534
July	19,700,000	20,966,521
August	19,500,000	21,557,818
September	19,000,000	.....
October	19,500,000	.....
Total 10 mos. 1919	186,200,000	
" 12 "	224,200,000	

It will be noted that the actual number of revenue passengers carried by the Company since December 1st, 1918, have far exceeded the estimate adopted by the Commission in its opinion in the former case. This fact is unquestionably due to the more pronounced prosperity and business activity of the community following the cessation of hostilities than was anticipated by the Commission at the date of its opinion, a demonstrated fact which should not be lost sight of when we come later in this opinion to estimate upon the number of revenue passengers to be carried in the future.

The excess revenue passengers over the Commission's estimate resulted in a corresponding excess in the Company's gross receipts over the Commision's estimates.

But on the other hand the transportation of this greater number of passengers required the Company to operate its cars a greater number of car miles, this fact being directly reflected in the Company's operating expenses during the period.

The books of the Company show that since October 1st, 1918, the date when the existing rate became effective, the earnings of the Company, after the payment of operating expenses, taxes, depreciation allowance and fixed charges, have been materially less than they were during corresponding periods in the past. The balance remaining after the payment of the above items, including fixed charges, has been referred to in the exhibits and by the witnesses and counsel throughout the hearings as the "balance to surplus," and that phrase will be used with such meaning throughout this opinion.

The following table shows this "balance to surplus" by months since October 1st, 1918, and until August 31st, 1919, with figures showing revenue passengers and car-miles during this period, and the corresponding figures for each month during the preceding year for comparison:

TABLE II.

OPERATING RESULTS BY MONTHS UNDER NEW RATES.
(Compared with same months in preceding year)

	Revenue Passengers		*Car-Miles*		*Bal. to Surplus*	
	1917	1918	1917	1918	1917	1918
Oct.	18,499,163	16,649,510	2,874,178	2,578,092	$64,688	*$60,731
Nov.	17,517,946	18,642,833	2,748,368	2,738,459	20,347	*10,425
Dec.	17,848,006	19,402,443	2,624,763	2,927,161	47,076	*16,688
	1918	1919	1918	1919	1918	1919
Jan.	16,486,891	18,771,764	2,498,672	2,910,073	*18,665	*54,190
Feb.	15,586,460	17,540,547	2,296,109	2,686,216	*20,160	*50,077
March	18,462,512	19,613,464	2,681,786	2,928,263	63,603	25,023
April	18,772,227	19,711,271	2,638,216	2,871,591	40,547	30,175
May	20,472,092	21,260,540	2,842,175	3,051,285	111,654	83,720
June	20,243,356	21,021,534	2,780,732	2,987,337	99,731	63,575
July	20,830,858	20,966,521	2,917,713	3,092,077	48,465	44,392
Aug.	20,929,425	21,557,818	2,922,891	3,124,480	30,169	*13,043
Sept.	20,355,921	.....	2,747,900	.....	*72,205	.....

*Deficit in Balance to Surplus.

NOTE.—October, 1918, influenza epidemic.

The above table shows that during the eleven months the six-cent fare has been in force the Company has earned a net balance to surplus of about $41,731, as against $488,485 earned during the corresponding eleven

months beginning October 1, 1917, and as against the average of $848,802 during the entire years 1912 to 1917, inclusive.

During these eleven months the Company transported 215,138,245 revenue passengers, the additional revenue from whom, through the one-cent increase in fare, may roughly be estimated at $2,150,000. Without this additional revenue during these eleven months the Company would have sustained a deficit in operating and fixed charges of $2,108,269, on the basis of the above figures.

Its fixed charges during these eleven months were $2,916,411, so that it is clearly demonstrated that, without such increased fares granted by our Order No. 4608, the Company would have fallen $808,142 short of being able to pay the interest on its bonds and other interest-bearing obligations.

These facts do at least two things:

First, they demonstrate conclusively both the wisdom and reasonableness of the increase in fares granted by our Order No. 4608 of January 7th, 1919; and

Second, they demonstrate just as conclusively the utter unreasonableness, certainly at the present time, of the applications which we have received for an order requiring the restitution of the former five-cent base rate of fare.

THE COMPANY'S PRESENT NECESSITIES.

The above figures do not, however, necessarily in themselves, jutify the present application for an increase in the fares of the Company beyond the six-cent base rate established by our former order.

In the case now before us the Commission has had the benefit of much more elaborate and exhaustive studies of the operating results of the Company in the past and other relevant data than we had before us in the former case.

The exhibits containing this data included detailed studies of the Company's primary and sub-accounts, respectively, by years from 1912 to 1918, inclusive; of the

same by months from January 1st, 1916, to June 30th, 1919, supplemented by further more general statements of operating results for July and August, 1919, furnished as those figures became available; tables and charts showing the nature, extent and effect of increases in the cost of labor and materials; comparisons with the operating results of similar companies in other cities; elaborate estimates of probable future operating results, accompanied by voluminous supporting sheets and data; and much other information and data not within the above general classifications.

In addition to the above data, which was furnished principally by the Company, the Commission has had the benefit of independent estimates and supporting data prepared by People's Counsel Joseph S. Goldsmith, and of an elaborate typewritten analysis of the Company's books, and estimate of probable future operating results, prepared by Osborne I. Yellott, who was for five and a half years the Assistant General Counsel of the Commission, subsequently participated in the Six-Cent Fare Case, and was again employed by the State as Special Counsel to assist in the presentation of this case.

The Company's only witness was John E. Zimmermann of Day & Zimmermann. Mr. Zimmermann was on the stand under direct examination for six days, and under cross-examination for eight days.

While under direct examination, he filed a large number of exhibits dealing almost exclusively with the past earnings of the Company and its prospective earnings under existing and proposed rate up to December 31st, 1919, all these estimate ignoring the wage increase of $805,524 above referred to. Mr. Zimmermann's general plan in these estimates was to take the actual figures for the first six months of the calendar year 1919 and add to them his estimates for the remaining six months of that year, thus showing the balance to surplus as it would be during that calendar year if his estimates were correct, and also showing how far this balance to surplus would fall short of the balance to surplus earned by the Company during the year 1916. His estimates for the remaining six months in 1919 were based mainly upon actual car-mile costs during the first six months of 1919 applied to

his estimates of the car-miles which it would be necessary to operate in order to carry the number of passengers which he estimated would be carried during such six months.

The original estimates of Mr. Zimmerman, Mr. Goldsmith, and Mr. Yellott were all predicated upon the assumption that the six-cent fare would continue in force to the end of the year, that the amount of maintenance work would be proportionately the same as that done during the first six months of the year, that the proportion of car-miles operated to revenue passengers carried would remain substantially the same, and that there would be no increase in wages.

The estimates of Mr. Zimmerman, Mr. Goldsmith and Mr. Yellott, respectively, are shown in comparative form in the following table:

TABLE III.

COMPARATIVE ESTIMATES FOR 1919.

	Estimates for Year of 1919		
	Yellott	*Zimmermann*	*Goldsmith*
Revenue Passengers	240,000,000	240,777,100	244,620,000
Car-Miles	35,520,821	35,721,405	.....
Average Fare	5.897c	5.887c	5.887c
Passenger Revenue	$14,140,819	$14,174,548	$14,400,786
Other Operating Revenue	122,360	125,000	122,055
Total Operating Revenue	$14,263,179	$14,299,548	$14,522,841
Maintenance Ways and Structures	$885,559	$689,429	$682,356
Equipment	856,033	860,867	825,207
Power Plants, etc.	58,450	58,229	57,984
Total	$1,600,042	$1,608,525	$1,565,547
Operating Power	$985,392	$985,392	$989,445
Platform Labor-Pass. Service	3,735,211	3,736,297	3,738,354
Other Transpor. Expense	948,420	975,599	927,246
Traffic	17,896	21,701	25,152
Accidents and Damages	.....	644,324	544,278
General and Miscellaneous	1,212,243	700,474	706,584
Total	$6,899,162	$7,063,737	$6,931,059
Taxes	$1,410,839	$1,420,142	$1,510,323
Total Maint. Oper. and Taxes	$9,910,043	$10,092,454	$10,006,929
Balance	$4,353,136	$4,207,094	$4,515,912
Depreciation	713,598	717,609	514,248
Balance	$3,639,538	$3,489,485	$4,001,664
Non-operating Income	40,000	24,250	20,562
Total	$3,679,538	$3,513,735	$4,022,226
Fixed Charges	3,178,949	3,178,950	3,202,854
Balance to Surplus Before Income Tax	$500,589	$334,785	$819,372
1918 Federal Income Tax Paid in 1919	.....	86,221	.....
Balance	.....	$248,564	.....

Subsequently, Mr. Zimmerman introduced a number of additional exhibits through which he undertook to demonstrate the Company's necessity for greater allowances on account of maintenance, depreciation and accidents and damages than he had made in his original estimates, which were based mainly, as we have stated, upon actual expenditures during the first six months of 1919. Still later in the hearings he presented other exhibits designed to show the effect of the wage increases above referred to, his final exhibit (Company's Exhibit B) indicating the necessity for a ten-cents straight fare, with two tickets for fifteen cents, in order to yield a balance to surplus of $1,017,476 (a little less than the 1916 balance) after the allowance of the sum which he claimed would be necessary for the proper operation of the Company's system.

The cross-examination of Mr. Zimmerman developed the fact that the main differences between his estimates and those of counsel for the public were in respect to the following items:

1. Passenger Revenue;
2. Maintenance;
3. Depreciation allowance;
4. Accidents and Damages;
5. Federal Income Tax;
6. Proper balance to Surplus.

Both People's Counsel Goldsmith and Special Counsel Yellott, at the time of making up their respective original estimate, had before them the complete figures only up to the end of May, 1919, although they subsequently received from the Company a few days prior to the first day of the hearings the complete figures for the month of June. The operating figures for the month of July were not furnished them until the hearings were well under way. Under the Company's methods of accounting it is possible to furnish the traffic figures a day or two after the close of each month, but the revenue and expense figures cannot be shown until the books for the month have been closed, which usually takes from two to three weeks.

It goes almost without saying that in a case of this kind, where a new rate of fare has been in force for only

a comparatively short time, more satisfying estimates can be made as to probable future results from the figures covering a period of nine, ten or eleven months, respectively, than from the figures for shorter periods.

The Commission now has before it the full figures for the period from January 1st, 1912, to September 30th, 1918, while the old fare of five cents was in force, and for the further period of October 1st, 1918, to August 31st, 1919, covering the period the new six-cent rate has been in force.

In view of the fact that the estimates of counsel for the public were prepared before the figures after May 30th, 1919, were available, that Mr. Zimmermann's original estimates were prepared with only one more month's data at hand, and that many of the differences between the respective estimates are due to the fact that they were made upon the basis of incomplete and different data, the Commission has concluded that it is incumbent upon it to go through the painfully laborious task of making its own estimate of what would have been the probable operating results for the entire calendar year of 1919 upon the assumption that the six-cent fare had remained in effect throughout the entire year.

In making this analysis the Commission adopted the methods about to be stated, using the order in which the items are set up in Table III:

Revenue Passengers

The first step in estimating probable operating receipts and expenses is to determine the number of revenue passengers likely to be carried during the period under consideration. In this case the period under consideration is the calendar year 1919.

Mr. Yellott's estimate of the number of passengers likely to be carried during the year was 240,000,000. At the time of making this estimate he had before him the number of revenue passengers carried each year during the years 1912 to 1918, inclusive, and the number carried each month during the years 1916 to 1918, inclusive. He also had before him the figures showing the actual number of passengers carried during the first six months of

1919. Analyzing the above figures, he found that the average number of passengers carried during the first six month of 1916, 1917, and 1918 was 48.4 per cent. of the average for the entire year. Applying this percentage to the total for the first six months of 1919, he found that the number to be carried during the entire year upon this basis would be 243,634,535. He then applied the average percentage with each month bore to the entire year during the years 1916 to 1918, inclusive, and found that these figure ranged between 239,000,000 and 249,000,000, the average being 243,330,500 for the entire year. He also found that the January and February figures were abnormal, and, in order to be conservative, took the average indicated by the remaining four months in the first half of 1919, which was approximately 240,000,000 for the entire year.

Mr. Goldsmith took the number of revenue passengers actually carried during the months of March, April and May, 1919, and multiplied this by four, thus arriving at his estimate of 244,620,000.

Mr. Zimmermann had available the monthly figures for the entire period, 1912 to 1918, inclusive, but excluded the year 1918 for the reason that it was in some respects abnormal, especially with respect to the severe weather in January and February and the epidemic of influenza in October. He then ascertained the average percentage which the revenue passengers carried each month bore to the number carried during the whole year throughout the period 1912 to 1917, inclusive, and applied these percentages to the last six months of 1919, adding the result so obtained to the actual number carried during the first six months. This method resulted in his estimate of 240,777,100 for the year. Incidentally, Mr. Zimmermann's table of these percentages showed that from 1912 to 1917, inclusive, the Company had carried during the first eight months of each year an average of 65.991 per cent. of the number carried for the entire twelve months.

It will be noted that the methods adopted by Mr. Yellott and Mr. Zimmermann were strikingly similar, but inasmuch as the latter had available more data than the former, the Commission in making its estimate has adopted the method and figures used by Mr. Zimmer-

mann. In short, we have accepted Mr. Zimmermann's calculations that 65.991 per cent. of the passengers carried during the year, from 1912 to 1917, inclusive, were carried during the first eight months of the year, and have applied this percentage to the known figures for the first eight months of 1919, the result being an estimate of 243,129,-230 revenue passengers for the entire year 1919. In our estimate we have used the round figure 243,000,000.

Car-Miles

In estimating the number of car-miles necessary to be run in order to carry the number of revenue passengers which he had estimated would be carried during the last six months, Mr. Yellott first found that the number of revenue passengers carried per car-mile had increased gradually from 5.84 in 1912 to 6.96 in 1918, the average for the seven years being 6.25. He attributed this increase from year to year to growth in population, greater business activity, increase in riding habit, larger cars and improvements in distribution of cars. He then found that the average for the first six months of 1919 had been 6.75, as against 6.98 during the first six months of 1918, 6.29 during the firt six months of 1917, and 6.33 during the first six months of 1916. Under these circumstances he took the figure for the first six months of 1919, to wit, 6.75, rather than the higher figure of 1918. He then applied this figure to the number of revenue passengers estimated by him to be carried during the remainder of the year and finally reached his estimate of 35,520,821 car miles to be operated during the entire year.

Mr. Zimmermann's estimate of the number of revenue passengers to be carried per car-mile during the last six months of 1919 was 6.74, as against Mr. Yellott's estimate of 6.75.

Mr. Goldsmith made no independent estimate as to the number of passengers per car-mile or number of car-miles to be operated.

The Commission found that the number of revenue passengers carried per car-mile during the first eight months of 1919 was 6.7837. They then found that the number of car-miles operated during the first eight months of each year from 1912 to 1917, inclusive, averaged 66.954

per cent. of the number operated during the entire year. This percentage was applied to the 23,651,322 car-miles operated during the first eight month of 1919 and it was found that the total for the year would be 35,324,733, this figure being used in its subsequent estimate of operating costs. The use of this figure in our estimates results in the assumption that the Company will be able to carry an average of 6.879 revenue passengers per car-mile during the entire calendar year 1919, as against the average of 6.7837 carried during the first eight months of the year. This will require a somewhat better distribution of service than the Company has maintained in the past, but this is one of the efficiencies which this Commission has in mind the Company should adopt in the future. The exhibits show that the number of revenue passengers carried per car-mile during the last four months of the year is normally greater than the average for the first eight months.

Passenger Revenue

An estimate of the probable revenue to be derived from a given number of revenue passengers at a given rate of fare involves necesarily the ascertainment of the amount of revenue produced per revenue passenger by that rate of fare. Owing to the use of half fare, commutation books and special tickets, this average revenue per revenue passenger is never as great as the nominal fare itself.

Mr. Yellott found that the average rate of fare received by the Company with the five-cent base fare was in force was 4.865 cents. He estimated that since the six-cent fare had been in effect the average fare collected had been 5.897 cent, but at the time of making this estimate the figures for May and June were not available. Applying the above figures to his estimate of revenue passengers, he found that the passenger revenue would be $14,140,819.

At the time of testifying Mr. Zimmermann had the figures for the entire period October 1st, 1918, to July 31st, 1919, and found that during this period the average fare had been only 5.887 cents.

Applying the figure 5.887 cents to his total estimated revenue passengers, Mr. Zimmermann got the figure $14,174,548 as the probable passenger revenue during the year.

Mr. Goldsmith in his estimate took the actual passenger revenue for the months March, April and May, 1919, multiplied this by four and reached the figure $14,400,786 for the entire year.

Under these circumstances the Commission has used the Zimmermann figure of 5.887 cents, and applying the same to its estimate of revenue passengers for the year has reached the conclusion that the passenger revenue during the year will be $14,305,410.

Other Operating Revenue

There being less than $3,000 difference between the estimates of Mr. Zimmermann and either of the representatives of the public in the case of this item, the Commission has accepted the Zimmermann estimate of $125,000.

Maintenance and Depreciation

Reference to Table III will show that there was relatively little difference between the several estimates on account of maintenance in the original exhibits filed by Mr. Yellott, Mr. Zimmermann and Mr. Goldsmith, respectively, these exhibits having been as follows:

	Yellott	*Zimmermann*	*Goldsmith*
Maintenance Ways and Structures..	$685,559	$689,429	$682,356
Equipment	856,033	860,867	825,207
Power Plants, etc.	58,450	58,229	57,984
	$1,600,042	$1,608,525	$1,565,547

In the case of the depreciation allowance, Mr. Yellott estimated $713,598 and Mr. Zimmermann $717,609. Mr. Goldsmith's estimate was not an estimate of depreciation at all, but was accepted as the balance left over after the allowance of $819,372 balance to surplus, representing dividend payments made by the Company during the years 1913 to 1918, inclusive, although he pointed out that the resulting depreciation allowance of $514,248 was substantially equivalent to the average amount set aside on this account during those years.

Both Mr. Yellott and Mr. Zimmermann arrived at their

maintenance figures by using the car-mile costs during the first six months of 1919, the difference between them being due to the fact that they used different car-mile totals. This meant that both of them assumed in these estimates that no more maintenance would be done per car-mile during the latter half of 1919 than had been done during the first half.

During the course of his testimony, Mr. Zimmermann contended most earnestly that his estimate of $1,608,525 as the cost of maintenance during the year 1919 was much less than the Commission should allow in its final estimate on this account, and also that his estimate of $717,-609 (5 per cent. of etimated gross) in the case of depreciation was inadequate.

Mr. Zimmermann filed a number of special exhibits covering these points. In one series of these special exhibits he assumed that the actual maintenance work done during the year 1916 would furnish a fair criterion for the amount which should be done during the year 1919, and estimated that the cost of such amount of maintenance work at 1919 prices would be $1,919,496, as against his estimate of $1,608,525 based upon the actual amount of maintenance done during the first half of the year 1919. He contended in this connection that there should be a corresponding increase in the depreciation allowance from $717,609 to $1,140,717—in other words, a total allowance of $3,050,213 for maintenance and depreciation on the basis of 1916 quantities and 1919 prices, as against $2,326,134 on the basis of 1919 quantities and 1919 prices, a difference of $726,079, which would amount to about one-third of a cent additional in the way of fare.

In another series of exhibits—and, in fact, this was his final recommendation and conclusion—Mr. Zimmermann contended that the Company should be given an allowance of nine cents per car-mile for maintenance and three cents per car-mile for depreciation, an estimated total of $4,286,568, against his other total of $2,326,134 based on 1919 quantities and 1919 prices, an increased allowance on this account of $1,960,434, or almost a full cent additional fare.

It is a universally accepted principle of rate-making

that the proprietors of a public utility are entitled to receive from the public through the rates a sum not only sufficient to pay operating expenses, taxes and fair return upon the fair value of the property used in the public service, but in addition thereto a sum sufficient to maintain such property in repair, and replace such portions of the same as may be worn out in the public service or have to be replaced from time to time for other reasons incident to their use in such service.

There is probably no one subject in connection with rate-making that has been more discussed than this general subject of maintenance and depreciation, and the difficulties of the subject to those who attempt to approach it along technical or theoretical lines are innumerable. The Supreme Court of the United States has never attempted any full discussion of the subject which could safely be taken as a guide to rate-making bodies.

For these and other reasons, this Commission has always endeavored to approach the question in a practical as distinguished from a theoretical way, and in all the cases which have come before it has attempted to provide in the rate a sum in dollars which will be adequate to maintain the property in reasonably good operating condition, and to provide in addition a fund out of which current replacements can be made promptly as required from time to time, without undue or abnormal enhancement in the cost of current maintenance.

The Commission sees little, if any, ground for any substantial distinction, so far as the public is concerned, between the cost of maintaining in good repair individual articles used in the public service, and replacing such articles when they are actually worn out and have to be retired from service. In either event the public should in fairness pay the bill, and it is a matter of no real concern to the public whether the bill is made out for maintenance or for replacements.

The public is, however, interested in replacements being promptly made, when and as required. It is also interested in the proper and equitable apportionment of the cost of the article replaced among those who have had the benefit of its service during its useful life. The

public is also interested to a considerable extent, and the utilities and regulatory bodies to an even greater extent, in the continued maintenance of an existing charge for service, as distinguished from charges which are constantly fluctuating up or down. And it is to accomplish the first two of these ends, to wit, prompt replacement as required and equitable apportionment of the cost of the article replaced among those who have enjoyed its service—and to prevent the second, to wit, frequently fluctuating rates for service—that depreciation and kindred reserves are created. It therefore follows that it is just as much incumbent upon the general public to pay through th rates sums sufficient for adequate depreciation reserves as it is to pay the cost of actual maintenance.

But, on the other hand, there is a correlative duty and obligation on the part of those who have dedicated their property to the public service to keep such property always in such a condition of repair as to render adequate service to the public. One who has devoted his property to the public service cannot, certainly under the law of this State, withdraw the entire property or any considerable portion of the same from the public service without the express consent of the State. And what he cannot do in gross, he cannot lawfully do by piecemeal.

In short, no public service corporation, or individual engaged in the public service, has the right, without the consent of the State, to dispose of the property dedicated to the public service and divert the proceeds thereof to the payment of dividends. And the same principle forbids the public service corporation neglecting properly to maintain its property out of the fund contributed by the public through the rates paid for the service, and use those funds for the payment of dividends. So to do is in effect to consume in the payment of dividends property which has been dedicated to the public service and in which the public has acquired a material interest by virtue of such dedication.

That the petitioning company has not kept up the maintenance of its property during the past several years to the extent to which it should properly have been kept up is a matter of common knowledge, and was

frankly admitted by the Company's principal witness at the hearing. Some justification for this state of affairs was sought in the fact that owing to war conditions during this priod it was not possible to keep up the maintenance of the property as well as it should have been kept up. This fact, coupled with the further fact that the operating officials of the Company no doubt felt that the prices of labor and materials were abnormally high during this period, and that true economy demanded that this maintenance be deferred, may be some justification for the Company's conduct in deferring the same to the extent that it did.

But these facts, while possibly justifying the deferring of maintenance itself, cannot be taken to justify the Company's action in neglecting to provide for such deferred maintenance during the period it was so accruing. As was pointed out so frequently at the hearings by all the counsel representing the public in this case, the Company continued throughout the entire war period to pay dividends upon is common stock at the accustomed rate of four per cent. per annum, and not only made absolutely no provision for taking care of the deferred maintenance accruing during this period, but almost entirely exhausted the depreciation reserves which it had so slowly set up in the past.

Under these circumstances this Commission feels that it would be grossly unfair to the public of today and of the immediate future to provide in the rates about to be established the large sums necessary either to pay for the deferred maintenance accruing during the period of the war, or to set up depreciation reserves which could have been so easily set up had dividends upon the common stock not been paid during the period of the war.

It is questionable under the law of this State, as declared by the Court of Appeals in the *Havre de Grace and Perryville Bridge Company* case, 132 Md., 16, whether this Commission has the power under the Public Service Commission Law to require a public service corporation, against the judgment of its directors, to set up any specific depreciation reserves, or has the power and authority to control the disposition of that reserve. But, regardless of the extent of its power in this connec-

tion, this Commission has considerable latitude in the first instance, at least, in establishing rates to be charged by public service corporations subject to its jurisdiction, and in respect to this matter can properly be guided to a considerable extent by the provisions which it finds such corporations have made both for the current maintenance of their properties and for the prompt replacement of those portions of the same which may require to be replaced from time to time for any reason. More liberal allowances for maintenance and replacement will naturally be made by this Commission in cases where it finds proper and adequate provisions are made by the owners of the property for the maintenance and replacement thereof than in cases where it finds a tendency to consume their property in the payment of unwarranted dividends.

Mr. Zimmermann contended in effect that the actual amount of maintenance done by the Company during the first half of the year 1919 was materially less than the actual amount done during the first half of the year 1916, although the aggregate cost of such maintenance in the first half of the year 1919 was greater than its aggregate cost in the first half of 1916 by reason of the much higher cost of labor and material at the present time. As we have stated, in a number of his exhibits he sets up these 1916 quantities of maintenance and 1919 prices, and his other estimates based upon nine cents per car-mile for maintenance and three cents per car-mile for depreciation allowances were only finally adopted by him at the very conclusion of his testimony on cross-examination.

The exhibits in the case show that during the years 1912 to 1918, inclusive, expenditures were made as follows on account of total maintenance and the depreciation reserve:

Year	*Total Maintenance*	*Depreciation Allowances*	*Total*
1912.....	$847,075	$428,574	$1,275,649
1913.....	877,309	530,226	1,407,535
1914.....	811,724	469,395	1,281,119
1915.....	719,279	410,548	1,129,827
1916.....	834,116	495,702	1,329,818
1917.....	923,641	528,042	1,451,683
1918.....	1,300,879	596,485	1,897,364

It will be seen from these figures that the amount expended for maintenance during the year 1916 was considerably above the average spent during the preceding years, also that the appropriation to depreciation was larger in 1916 than it had been during any of the preceding four years, with the exception of 1913, and was considerably above the average for the four years.

Under these circumstances we are constrained to adopt Mr. Zimmermann's view that the appropriations on account of maintenance and depreciation in 1916 fairly represented the Company's conception of the amounts proper to be devoted to these purposes, especially in view of the fact that the year 1916 ended with a balance to surplus of approximately $300,000 more than the Company had earned during any of the four preceding years, and that year was regarded as the most prosperous in its history. It is fair to assume under these circumstances that if the managing officers of the Company had conceived that more money was required for maintenance or depreciation during the year 1916 it would have been expended.

The actual amount of the Company's property subject to depreciation is not materially greater at the present time than it was in 1916. Therefore the only factor to be reckoned with is the increased cost of labor and materials at the present time over their cost during the year 1916.

Mr. Zimmermann filed a number of exhibits dealing with the increased cost of labor and material at the present time, some of these exhibits going as far back as 1893. In these exhibits it appeared that the 1919 costs of maintenance, labor and material included, were approximately 101 per cent. in excess of the 1916 costs.

Resorting to the exhibits showing the monthly expenditures on various accounts during the year 1916, we find that the average maintenance expenditures per month for the first seven months of that year were $66,039. During the first seven months in 1919 we find the average maintenance expenditures per month were $133,558, an increase of a trifle over 102 per cent., this fact indicating that practically as much maintenance, in

quantity, was done during the first seven months of 1919 as during the first seven months of 1916.

Going further, we find that the amount spent for maintenance in August, 1916, was $75,509, whereas the amount spent for maintenance in August, 1919, was $196,826, an increase of 106.6 per cent., this larger increase in the percentage being no doubt due in part to the wage increase of August 16th, 1919.

It is somewhat difficult to reconcile Mr. Zimmermann's contention that the proper allowance for maintenance at the present time would be nine cents per car-mile with the fact that during the year 1916, when the Company did all the maintenance work which it evidently thought necessary, such cost was at the rate of but 2.66 per car-mile.

It is evident from the above figures as to the actual expenditures for maintenance during the first seven months of the years 1916 and 1919, respectively, if we accept Mr. Zimmermann's assumption that the costs of maintenance, labor and material have advanced approximately 101 per cent., that the Company has done substantially as much maintenance work during the first seven months of 1919 as it did during the first eleven months of 1916.

The car-mile cost of maintenance during the first seven months of 1919 was 4.55 cents. Applying this figure to the 14,797,891 car-miles estimated by us to be operated during the last five months of the year, we get the sum $647,043 to be added to $934,910, the actual cost of maintenance during the first seven months, this addition resulting in a total of $1,608,053 as the estimate of the probable cost of maintenance during the entire calendar year 1919.

Or, if we take the actual maintenance cost in 1916 and increase it by 101 per cent., we get the sum of $1,676,537 as the probable cost of maintenance during the entire year 1919.

Under all the circumstances we have concluded to adopt this latter figure as our estimate.

In the case of depreciation allowances to maintain the Company's depreciation reserve, the same being referred to in the exhibits as "depreciation," the Company during the past few years has been accustomed to make these allowances in per cent. of gross, the usual allowance being five per cent. of gross. While this may be a convenient method of computing proper allowances for depreciation in cases where charges for service run along regularly the same from year to year, it must be very evident that there is little or no logic in its use where such charges fluctuate from time to time. Certain it is that this Company's depreciable property did not begin to depreciate twenty per cent. more rapidly overnight between September 30th, 1918, and October 1st, 1918, when the five-cent fare was increased to six cents, and the Company's gross revenues increased overnight proportionately.

As we have said in an earlier portion of our discussion of the subject of maintenance and depreciation, this Commission's aim is always to meet this subject in a practical way. Ordinarily depreciation allowances are expressed in percentages of the value of the depreciable property, or equated over the Commission's valuation of the whole. But in this case the valuation of the Company's property has never been completed, and we are therefore without that guide. Common sense and a knowledge of the purposes and objects of a depreciation reserve seem to dedicate that by reason of the enhanced costs at the present time, depreciation allowances, when expressed in dollars, and even where there has been no material increase in quantities, should be materially larger than in the past. There would also seem to be some relation between the car-miles operated and the amount set aside from year to year to provide for replacements.

Under the circumstances we have determined, not for the purpose or with the object of establishing a precedent, but with the idea of reaching an amount which will be reasonable under the circumstances of this particular case, to base our estimate of depreciation allowances for the last four months of the year 1919 upon the car-mile ratio to such actual allowances during the

first eight months of 1919 These allowances during the first eight months of 1919 amounted to $475,734, or 2.01 cents per car-mile. Upon this basis our estimate for the depreciation allowances for the last four months of the year is $234,636, which, added to the above $475,735, makes $710,370.

The allowances in the past have been as follows:

1912	$428,574
1913	530,226
1914	469,395
1915	410,548
1916	495,702
1917	528,042
1918	596,485

Operating Power Plant

Mr. Zimmermann in his estimate accepted June, 1919, as fairly representing the car-mile cost of power plant operation at the present time. We have taken the actual cost for the first six months of 1919 and estimated the cost for the remaining six months by multiplying the June cost per car-mile, 2.49 cents, by the car-miles estimated to be run during the last six months, out total being $975,516, as against Mr. Zimmermann's and Mr. Yellott's estimates of $985,392 and Mr. Goldsmith's estimate of $989,445.

Platform Labor

Mr. Zimmermann in this case took the car-mile cost of platform labor for the first six months of 1919 and multiplied it by his estimate of car-miles to be run during the remainder of the year, adding the actual and estimated, and getting $3,736,297. Mr. Yellott took the car-mile cost for the ten months, September, 1918, to June, 1919, inclusive, and in other respects following the same course as Mr. Zimmermann, estimated the cost for the year at $3,735,211. Mr. Goldsmith took the actual amount paid for platform labor during March, April and May, 1919, multiplied this sum by four, and got the figure $3,738,354.

The Commission has taken the average car-mile cost for the first seven months of 1919 and multiplied this by

its estimated car-miles for the last five months, the total of actual and estimated being $3,701,102.

Other Conducting Transportation

The same methods were followed by the several parties in estimating the cost of this item as they followed respectively in estimating the cost of platform labor, with the result that the Commission's estimate is $959,391, as against Mr. Yellott's estimate of $948,420, Mr. Zimmermann's estimate of $975,599 and Mr. Goldsmith's estimate of $927,246.

Traffic

Owing to the particular nature of the items embraced in this account, Mr. Yellott concluded that it was not properly susceptible of computation or a car-mile basis, the same embracing advertising, net cost of parks, etc., and estimated that the cost for the year would be $17,896. Mr. Zimmermann's estimate was based on the car-mile cost for the first six months and amounted to $21,701. Mr. Goldsmith's estimate was based on actual results for March, April and May, 1919, multiplied by four, and amounted to $25,152.

The Commission had the benefit of the July and August figures and found that there was a net profit from the parks during these two months which resulted in a credit item overbalancing the debits for the year. It was nevertheless necessary to estimate the probable cost during the remainder of the year, and this was done by taking the actual cost for the first six months, reducing the same to a car-mile basis, multiplying this by the estimated car-miles for the last four months, adding actual and estimated, and deducting the July and August credit items, leaving a net expense for the year of $1,086.

Accidents and Damages

In this case both Mr. Yellott and Mr. Goldsmith based their estimates upon the figures in the exhibits furnished them, which showed actual appropriations to the accident reserves instead of actual expenditures during the first six months. This error was corrected by Mr. Zim-

mermann in his exhibits and testimony, and he also contended that there should properly be an addition of $110,000 to the accident reserves for the current year. The Commission has accepted the Zimmermann estimate of $644,324.

General and Miscellaneous.

In this case Mr. Yellott adopted the car-mile basis from October 1st, 1918, to June 30th, 1919; Mr. Zimmermann the car-mile basis for the first six months of 1919, and Mr. Goldsmith the actual payments during March, April and May, 1919, multiplied by four.

The Commission has adopted the car-mile costs for the first seven months of 1919 as the basis for the remaining five months and has combined actual and estimated, with the result that its estimate for the year is $705,077.

Taxes (Except Federal Income Tax)

In this case Mr. Yellott estimated each class of tax separately, Mr. Zimmermann applied the car-mile basis for the first six months of 1919, and Mr. Goldsmith used the actual payments for March, April and May, 1919, multiplied by four.

The Commission took the first six months of actual cost of all items except park tax and Federal income tax, multiplied such actual by two for the year, estimated the park tax on the basis of 6.91 per cent. of its total actual and estimated passenger revenue for the year, getting a total of $1,394,370, exclusive of Federal income tax.

Non-Operating Income

Mr. Zimmermann estimated this on the basis of car-mile receipts for the first six months, applying this basis to estimated car-miles during the remaining six months and adding the totals of actual and estimated. The Commission followed the same course, except that it took the car-mile basis for the first eight months, and arrived at the result $22,475, which is almost the exact result which would have been obtained by considering the actual for the first eight months as two-thirds of the year and computing the entire year upon that basis.

Fixed Charges

In this case both Mr. Yellott and Mr. Zimmerman took the actual fixed charges for the first six months of 1919 and multiplied this sum by two to get the fixed charges for the year. Mr. Goldsmith took the fixed charges for March, April and May, 1919, multiplied this amount by four and got a somewhat higher sum. The Commission adopted the method pursued by Mr. Yellott and Mr. Zimmermann, and its estimate of this item for the year is $3,178,950.

1918 *Federal Income Tax*

The amount of this tax was $86,221. Mr. Zimmermann originally included it in his estimate, but subsequently deducted it to make his estimate comparable with the others, reserving the question for further consideration. The Commission approved this course, thinking it better to reserve the question until the 1919 estimate net income and consequent Federal income tax on that year's receipts have been determined.

The results of the aforegoing computations of the Commission are shown in the following table:

TABLE V.

COMMISSION'S ESTIMATED INCOME STATEMENT.

For Calendar Year 1919

	Amount	*Per Cent. of Gross*	*Per Car-Mile*
Car-Miles	35,324,733		
Revenue Passengers	243,000,000		
Average Fare	5.887c		
Passenger Revenue	$14,305,410	99.1338	40.4969c
Other Operating Rev.	125,000	.8662	.3538
Total	$14,430,410	100.0000	40.8507
Maint. Way and Structure			
Maint. Equipment			
Maint. Power Plant			
Total Maintenance	$1,676,573	11.6183	4.7462
Oper. Power Plants, Etc.	$975,515	6.7602	2.7616
Platform Labor	3,701,102	25.6477	10.4773
Other Trans. Expense	959,391	6.6485	2.7159
Traffic	1,086	.0075	.0031
Accidents and Damages	644,324	4.4651	1.8240
General and Misc.	705,077	4.8861	1.9960
Total Operating	$6,986,495	48.4151	19.7779
Taxes (except Fed. Inc. Tax)	$1,394,370	9.6627	3.9473
Total Oper. Main. and Taxes	$10,057,438	69.6961	28.4714
Balance	$4,372,972	30.3039	12.3793
Depreciation	710,370	4.9227	2.0109
Balance	$3,662,602	25.3812	10.3684
Non-Operating Income	22,475	.1557	.0636
Total	$3,685,077	25.5369	10.4320
Fixed Charges	3,178,950	22.0295	8.9992
Balance to Surplus	$506,127	3.5074	1.4328

The Wage Increase of August 17th, 1919.

Company's Exhibit No. 13 F-1 shows the effect of the principal wage increases of August 17th, 1919, as follows:

TABLE V.

PRINCIPAL WAGE INCREASES AUGUST 17, 1919.

Platform Employees—First 3 mos.	.41 hour	.45 hour
Next 9 mos.	.43 "	.48 "
Thereafter	.45 "	.50 "
Line Superintendence	$180.00 mo.	$200.00 mo.
Dispatcher	5.50 day	6.00 day
Car Cleaners (Male)	3.00 "	3.30 "
Street Inspectors	170.00 mo.	185.00 mo.
First-class Mechanics	5.00 day	6.00 day
Shop Foremen	200.00 mo.	230.00 mo.
Fireman	5.30 day	5.80 day
Watch Engineers	5.30 "	6.00 "
Electrical Operators	5.60 "	6.15 "
Sub-station Operators	5.50 "	6.00 "
Linemen	5.00 "	5.50 "
Asst. Engineers	200.00 mo.	225.00 mo.
Pavers	5.00 day	5.50 day
Rammers	3.75 "	4.15 "
Laborers	3.50 "	4.00 "
Construction Supervisors	150.00 mo.	165.00 mo.
General Office and Mis. Employees		Approx. 10% inc.

Company Exhibit No. 13 F purports to show the estimated cost of the above wage increase based on hours of labor for the preceding twelve months, as follows::

TABLE VI.

ESTIMATED COST OF WAGE INCREASE OF AUGUST 17, 1919.

Class of Employee	*Total Days*	*Amount*
Conductors and Motormen	834,694	$399,748
Other Transportation Employees	110,511	45,977
Car House Employees	68,447	54,305
Shop Employees	155,748	121,518
Power Employees	102,727	46,696
Roadway Employees	183,892	98,357
General Office and Miscellaneous Employees	84,658	38,923
Total	1,540,677	$805,524

There was no effort upon the part of counsel for the public to attack or impeach the above estimates, and as the Commission has no reason to believe the same are not accurate, it will adopt the amount of $805,524 as the cost of such increase.

In doing so, however, we are not unmindful of the evidence in the case to the effect that certain of the above classes of labor were notoriously inefficient during a large portion of the period used as the basis of such estimate, and that there is good reason to hope that greater efficiency in the case of such classes of labor will be brought about in the near future.

While we use the above figure, therefore, for the purpose of our final calculations, it is so used with this reservation.

Balance to Surplus

Table IV shows that the Commission's estimated balance to surplus on the basis of the wages scales in effect prior to August 17th, 1919, was $506,127. From this balance to surplus the cost of the wage increase for the remainder of the year should properly be deducted in order to determine the true 1919 balance to surplus.

We will assume for our present purposes that the effect of the continuance of this wage increase for the four and a half months from August 17th to December 31st would be to increase the expenses of the Company four and one-half twelfths the total increase, $805,524, or $302,071.

This amount deducted from our balance to surplus of $506,127, per Table V, would leave a true balance of $204,056 for the current year.

The following table shows the balance to surplus by years from 1912 to 1918, inclusive::

TABLE VII.

BALANCE TO SURPLUS BY YEARS.

Year	*Balance to Surplus*	*Cumulative Average*
1912.....	$678,042	
1913.....	792,322	$735,182
1914.....	819,368	763,244
1915.....	819,368	777,275
1916.....	1,108,124	843,445
1917.....	875,587	848,802
1918.....	332,652	775,066

Reference to an early portion of this opinion, or to our opinion in the Six-Cent Fare Case, will show that in that case we established the period 1912 to 1917, inclusive, as the pre-war period, and the pre-war surplus as $848,802.

Deducting the above $204,056 from such pre-war surplus of $848,802, we find that by following this method of computation there would be at the end of the year a deficit of $644,746 under the pre-war surplus.

To have required all the revenue passengers since August 17th, 1919, up to December 31st, 1919, to make up this deficit would have required an increase in the fare of approximately seven-tenths of one cent, or to require those using the cars after October 1st and until December 31st to make up the same would require an increase in the fare over one cent.

It is not possible, of course, at this date for the Commission to pass an order which would require patrons who have used the cars in the past to pay the Company the balance of the fares which they should have paid in order to render the Company adequate compensation for the service rendered, and whatever may be the justice of the Company's contention that our order now should provide compensation for the losses sustained since the date of the filing of the petition for an increase in fares, the Commission feels that the ends of justice can best be subserved by projecting the estimates

for 1919 into the year 1920 and assuming that the estimates for the year January 1st, 1919, to December 31st, 1919, would apply equally well to the year October 1st, 1919, to September 30th, 1920.

There are no such evidences at the present time of prospective reductions in the cost of labor or materials as to justify this Commission in predicating the relief to be granted the Company upon the assumption that there will be such reductions. We will therefore assume that our estimated balance to surplus of $506,127 is the balance to surplus which the Company would have earned during the year October 1st, 1919, to September 30th, 1920, had there not been the wage increase of August 17th, 1919.

Special Counsel Yellott in his argument at the conclusion of the case laid particular stress upon the fact that both his and Mr. Zimmermann's estimates were based upon actual figures for the first six months of 1919, the estimated figures for the last six months having been predicated largely upon unit costs during that period, and that consequently any projection of these estimates beyond December 31st, 1919, would have to be upon the assumption that operating results would be no more efficient and conditions generally no better from the standpoint of the Company than they had been during the first six months of 1919.

The Commission thinks this point is well taken, and feels that it is but reasonable to assume that many of the unfavorable operating conditions which existed during the latter part of 1918 and the first half of 1919 will not continue on in full force and effect into any considerable period in the future. It is, however, impossible for this Commission to estimate in terms of dollars and cents the effect of this anticipated improvement in operating conditions, just as it is impossible for the Commission to foretell with any degree of accuracy whether or not there may arise other conditions in the future which will affect the Company adversely. About all we can do under the circumstances is to assume, and we think we are justified in so assuming, that operating conditions in many of the respects referred to by both the People's Counsel and Special Counsel in

their arguments, and during their cross-examination of Mr. Zimmermann, will not be as unfavorable to the Company as they were during the latter part of 1918 and the first half of 1919. This assumption has had some weight with this Commission in reaching its conclusions in this case, but, as we have said, is not one which can be reduced even approximately to figures.

We are therefore deducting our estimated balance to surplus of $506,127 from the $805,524 wage increase, and conclude that with such wage increase in effect the Company will earn during the year October 1st, 1919, to September 30th, 1920, $299,397 less than the amount necessary to pay its interest charges in full unless greater revenues are given it through an immediate increase in fares.

In the former case, as we have hereinbefore stated, this Commission did not commit itself absolutely to the proposition that the Company should be permitted at all hazards to charge fares which would enable it to earn its pre-war surplus, although we permitted an increase in fares designed to accomplish substantially that result.

Our hesitancy to commit outselves absolutely upon this point in our previous opinion and order was due largely to the fact that we hoped and rather expected that with the resumption of peace there would come about a general and fairly rapid reduction in the prices of labor and commodities which would prove the continuance of the increased fare authorized in that case to be unnecessary.

At the present time we see no evidence of any such general reduction in the prices of either labor or commodities, although it is true that there are some few commodities which have recently fallen in price. These are, however, the exceptions rather than the rule.

For these and other reasons the Commission feels it would be unwise, misleading and inexpedient to continue the fixing of rates for our public utilities upon the basis of a war emergency.

At the same time we feel that conditions today are so

far from normal that it would be unwise for the present for us to revert to the former method of fixing rates solely upon the basis of valuation.

Rates for service in the case of public utilities are ordinarily fixed in the hope that they will continue in force without change for long periods of time. Realizing as we do that present costs are abnormal, that they are not likely for many years, if at all, to return to their former or pre-war level, and that they will ultimately find their new post-war level, which will probably be higher than the pre-war level but lower than the present day abnormal cost, the Commission is of the opinion that in this interim of social unrest and business uncertainty some better and more satisfactory basis of fixing rates for the period of such unrest should be found than either war emergency or valuation.

Heretofore, in this Commission's decisions and orders in the two recent cases of the Consolidated Gas Electric Light and Power Company, to wit, the Electric Rate case and the Gas Rate case, and to a very considerable extent in our former order in the United Railways & Electric Company Six-Cent Fare case, we have been largely governed in reaching our conclusion by the existing corporate requirements of the several companies under the peculiar circumstances existing at the time of our order.

In short, we have felt in all these cases that the best interests of the public of this city and State peremptorily demanded that these corporations be permitted to charge rates for their services which would yield them revenues sufficient both to enable them to render the public adequate service for the present and to maintain their properties and affairs in a condition to continue to render the public such adequate service until such time in the future as conditions can fairly be considered to have become normal. When that time comes, it will be time enough to adopt methods which will result in greater permanency of rates.

It is true that this principle furnishes no standard by which relief can be given to other public utilities operating under somewhat similar conditions, but whose corporate requirements are materially different from those

of the corporation in the case of which such principle may have been applied. For illustration, the corporate requirements of a public utility having a large bonded indebtedness at a high rate of interest might well be materially greater than the corporate requirements of another utility having a relatively small funded debt in comparison with the actual value of its property and paying a correspondingly low rate of interest.

And this Commision would not for a moment contend, nor does it admit, that a proper application of the above principle would necesarily require the allowance of a larger relative balance to surplus in the case of a former company than in the case of the latter, regardless of all other circumstances.

The fixing of rates of charge for the service of public utilities is essentially a business problem, and, as was so tersely said by Mr. Justice Hughes of the Supreme Court of the United States in the Minnesota Rate Cases, is not a matter of formulas. This same proposition has repeatedly been stated by the Supreme Court in other ways.

For instance, it has been held that regulatory bodies in making their valuations of property used in the public service for the purpose of fixing rates must use their best judgment in the endeavor to arrive at a valuation which will be just and fair as between the public and the owners of the property under all the facts and circumstances of the particular case.

Again it has been held that there is no standard rate of return upon investment which should be allowed by regulatory bodies under any and all conditions, but that the proper rate of return to be allowed in any given case is the rate which would be fair and just as between the public and the owners under the circumstances of that particular case.

Likewise it has been held that in prescribing the charges to be made by the utility for its service, those charges shall not follow any set standard, but shall be such as are just and fair as between the public and the owners under all the facts and circumstances of the particular case.

Thus we see that at every stage of rate-making the regulatory body is expected to use its best judgment and discretion in the premises and render judgments which will be based in large part at least upon the facts and circumstances of the particular cases before them.

In short, we must take each case as we find it, and endeavor to adopt that form and measure of relief which we think best adapted to the circumstances of that particular case.

In the course of our opinion in the Six-Cent Fare case this Commission said as to the United Railways & Electric Company of Baltimore:

> "In the course of a relatively few years the street railway has become one of the most important adjuncts to life in all thickly populated communities. With water, gas and electricity, it has become one of the prime necessities of life. Without it, business would come almost to a standstill, and social life in our cities and suburban communities would be most radically changed. So dependent have the people of our cities become upon the street railway that an interruption of only an hour or so in the service is almost instantly felt throughout the length and breadth of the community, and continuous bad or inadequate service is a thing which no community will long tolerate if redress of any kind can be found.
>
> "From the above reasons it follows that the prime obligation which any State regulatory body, such as a public service commission, owes to the public in connection with the property and affairs of a street railway corporation is, first, to see that the property of such corporation is at all times so constructed, equipped and maintained as to enable those in charge of the same to render at all times adequate service to the public, and, second, to see that such character of service is at all times rendered.
>
> "The former proposition required that the Company shall at all times be kept in such a condition, financially, that it can command investments in its property by the investing public, in order that necessary extensions to meet the demands of a rapidly

growing community may be made promptly when and as required, and that its road-bed, power-houses and equipment may always be of a type and capacity to render adequate service economically and efficiently. There is no statutory law which can be resorted to in order to compel the investing public to invest its money in a public utility rather than in any other class of enterprise, and the only laws which can be appealed to are the natural laws of trade and commerce which lead men to invest their money where it may reasonably be expected to yield them a fair return for its use, and forbid the investment of money where there is no reasonable hope or expectation of such a return.

* * * * * *

"Consequently it follows that a State regulatory body could do no greater harm to a community so entirely dependent upon the service of a street railway company as the public of Baltimore is dependent upon the service of the respondent Company than to refuse to permit it to charge such rates for its service as will enable it at all times both to command the investment of money necessary for the making of required extensions and continued maintenance of its property in efficient condition, and also to render such character of service as the needs of the community reasonably require. So to refuse would not only be to render it physically impossible for the Company to render adequate service, but would also be to drive the Company itself into a position of pecuniary decrepitude which would in the end result in bankruptcy and dissolution, after a long-drawn-out period of such inadequate service, during which the property and equipment would fall into a condition of disrepair which could only be corrected after the lapse of many years and the expenditure of many millions of dollars."

The exhibits in this case show that the petitioning Company had outstanding June 30th, 1919, net funded securities amounting to $64,762,000, and our estimates show that the Company's fixed charges amount at the present time to $3,178,950, the great bulk of this amount

being made up of interest charges on the above funded securities.

The exhibits in this case show that the petitioning Company had outstanding June 30th, 1919, net funded securities amounting to $64,762,000, and our estimates show that the Company's fixed charges amount at the present time to $3,178,950, the great bulk of this amount being made up of interest charges on the above funded securities.

The exhibits also show that on June 1st, 1922, there will be due $3,000,000 of the City & Suburban Railway First Mortgage Five per Cent. underlying bonds; that on November 1st, 1929, there will be due $1,500,000 of the Baltimore Traction Company First Mortgage Five per Cent. bonds; that on October 1st, 1931, there will be due $4,946,000 Maryland Electric Railways First Mortgage Five per Cent. bonds, guaranteed by the petitioning Company, $823,000 of these bonds now being in the treasury of said Company; that on March 1st, 1932, there will be due $600,000 of the Central Railway Extension and Improvement Five per Cent. mortgage bonds, and on May 1st, 1932, $700,000 of said Central Railway Company Consolidated Five per Cent. mortgage bonds, both underlying issues.

Meanwhile, on February 1st, 1922, there will be due $1,222,000 of the petitioning Company's five-year five per cent. gold notes; on August 15th, 1922, $1,528,000 of the Company's five-year convertible five per cent. gold notes, and on the same day $3,000,000 of the Company's five-year convertible six per cent. gold notes.

In addition to the above the Company has at the present time a number of outstanding bills payable, for the funding of which arrangements must be made in the near future.

From the above it will be seen that between the present time and August 15th, 1922, the Company must refinance over $8,000,000 of existing interest-bearing obligations, in addition to which it must provide some form of financing for additional large sums covering necessary additions, betterments and extensions.

In our opinion in the Six-Cent Fare case we commented upon the fact that during the period 1912 to 1917, inclusive, the average fixed charges of the petitioning Company had amounted to $2,810,807 and its average balance to surplus $848,802, saying in this connection:

> "It will be noted that the above net earnings amounted to approximately one and one-third times the amount of the Company's fixed charges, a ratio by no means excessive in view of the desirability of upholding the credit of the Company, and, in fact, considerably less than that demanded by reasonably conservative investors."

In the case now before us there was adduced a considerable amount of testimony relative to the unmarketability under existing conditions of street railway securities upon anything like favorable terms where such corporations had earnings available for interest, dividends and surplus less than one and two-thirds times or double their fixed charges. Numerous instances were given of the high cost of money in the case of the sale of street railway securities in the recent past.

This opinion has already been so far prolonged that we will not stop to discuss this subject further than to say that the high cost of financing in the case of public utilities is one which ordinarily falls directly upon the consumer and must be paid by him through the rates charged for the service, and to refer to the latest decision of the Supreme Court of the United States touching upon this subject and recognizing the difficulties of financing under existing conditions in the case of public service corporations.

In the case of the *Lincoln Gas & Electric Light Company* v. City of Lincoln, decided June 2nd, 1919, Mr. Justice Pitney, delivering the opinion of the Court, said:

> "It is a matter of common knowledge that, owing principally to the World War, the costs of labor and supplies of every kind have greatly advanced since the ordinance was adopted, and largely since this cause was last heard in the court below. And it is equally well known that annual returns upon capital

and enterprise the world over have materially increased, so that what would have been a proper rate of return for capital invested in gas plants and similar public utilities a few years ago furnishes no safe criterion for the present or for the future."

Under the circumstances, this Commission has no hesitancy in saying that the best interests of the public with respect to the petitioning Company require that it should earn a balance of not materially less than one and a half times its fixed charges after the payment of operating expenses, taxes and the making of reasonable allowances for its accident and depreciation reserves.

Our calculations show that the amount of additional earnings required to produce this sum is approximately $1,000,000.

Reference to Table IV, our estimated income statement, will show that we estimate the Company's total net receipts for the year, before deducting fixed charges, to be $3,685,077. If this amount be increased by $1,000,000 it will be found to be something less than one and one-half times the Company's interest charges.

Testing the above conclusion in another way, we find that on August 31st, 1919, the Company's funded and floating debt amounted to $65,996,000. If, now, we were to accept as correct the contention so frequently made that the Company's outstanding stock to the amount of $20,484,200 represents no actual value, and assume that the outstanding funded and floating debt represents the full fair value of the Company's property, we will find that the above return of $4,685,000, which we have stated to be a reasonable return, amounts to a return of barely seven per cent. upon the fair value of the Company's property as indicated by its outstanding funded and floating debt.

This Commission, in all its history, which includes a long pre-war period, during which the cost of money was very much lower than at present and operating risks not nearly so great as now, has never held that a return of seven per cent. was unreasonably high when rates were based upon valuation.

In the two Telephone Company cases we held that the Company should be permitted to earn a return not exceeding eight per cent.; in the case of the Baltimore County Water & Electric Company we established rates estimated to yield between seven and eight per cent. upon the fair value of the property as determined by this Commission. In the cases of the Consolidated Gas Electric Light and Power Company of Baltimore the charges authorized by us were estimated to yield the Company a return of approximately 8 per cent. upon the assumed fair value of the property. In a number of other cases we have held that, in view of the nature of the risks surrounding the operation of public utilities, the rate of return should materially exceed the current legal rate of interest, six per cent.

We are not to be understood by anything we have said with respect to the fair value of the property here in question that such fair value is to be measured by the outstanding funded debt of the Company. We have not so decided, and use that assumption only for purposes of illustration and to show that these returns in money which we have concluded the Company should have would be no more than a reasonable return if measured upon the basis of such assumption.

Our conclusion is, therefore, that the petitioning Company is entitled to charge rates which will yield it a balance to surplus of approximately $1,000,000 after the payment of its operating expenses, taxes, fixed charges, and the making of reasonable allowances for the maintenance of its accident and depreciation reserves.

It remains now to be seen what rate of fare will be necessary to yield such balance to surplus of approximately $1,000,000.

RATE OF FARE NECESSARY

Having reached the aforegoing conclusion, it now becomes necessary for the Commission to establish for the Company rates of fare which may reasonably be anticipated to yield the petitioning Company a net balance to surplus of approximately $1,000,000, after the payment of operating expenses, taxes, fixed charges and the set-

ting aside of the amounts hereinbefore declared by us to be reasonable for the creation and maintenance of proper depreciation and accident reserves.

Reference to the Company's revised schedule P. S. C. Md. No. 8 will show that, in addition to the regular base rate of six cents for adults, there were prescribed in such schedule and are now in force under our Order No. 4608 and supplementary orders Nos. 4609, 4646 and 4944 a number of special fares, to wit: half fares commutation tickets for first, second and third zones, cash transfers on the Curtis Bay Line and tickets in bulk for the use of the employees of the Bethlehem Steel Company and the Central Foundry Company.

The Company has proposed flat increases of from one-fourth cent to one and one-half cents in each of the above special rates with the exception of the half fares for children, as to which it has proposed no increase.

The Company has also furnished the Commission an estimate of the number of such special fares which will probably be paid during the year 1919, together with an estimate of the yield of the same in the event of such proposed increases. These figures were based on increases in the base rate of from one-fourth of a cent to one and one-half cents, respectively.

For our present purposes it will suffice to take the Company's estimate based on the supposition of a one-cent increase in both base and special fares. This estimate is shown in the following table:

TABLE VIII.

YIELD OF INCREASES IN SPECIAL FARES.

Increase on One-Cent Basis.

7,918,283	Half Fares	4	cts.		
1,512,622	Curtis Bay Cash Transfers	4	"	1 ct.	$15,126.22
1,437,730	1st Co. Com. Tickets	4½	"	1 "	14,377.30
407,740	2nd " " "	5	"	1 "	4,077.40
54,530	3rd " " "	5	"	1 "	545.30
1,947,508	Bethlehem Steel	4½	"	1 "	19,475.08
128,250	Central Foundry	5	"	1 "	1,282.50
13,406,663					$54,883.80

It will be seen from this table that the Company estimates that out of a total of 240,777,100 revenue passengers during the year there will be but 13,406,663 of the same using half fares and the above classes of special tickets, and that a flat increase of one cent in the case of each such special fare, with the exception of half fares, would yield the Company an additional revenue of but $54,883,80. It follows that an increase of one-half cent in these special fares would yield the Company but $27,-441.80 additional revenue.

In case of half fares for children the former rate of three cents was sixty per cent. of the adult rate of five cents. With the increase in the adult rate from five to six cents, it seemed desirable at the time of our former order to increase the half fares to four cents, or sixty-six and two-thirds per cent. of the adult rate. Under the circumstances, the Commission would not feel justified in making any further increase in this particular fare unless it should happen that by reason of a considerable increase in the adult rate the half-fare rate would be disproportionately low as compared with the rates in force for many years before the increase in the adult fare from five to six cents.

In our previous opinion and orders in the Six-Cent Fare case the charge for Curtis Bay cash transfers was increased from three to four cents in order to be more nearly proportionate to the increase in the base rate from five to six cents. Under the circumstances, the Commission does not feel that there should now be a further increase in the charge for this cash transfer, since the effect of the increase in the base rate which we are about to authorize will be only to bring the four-cent cash transfer on the Curtis Bay Line, if permitted to remain at four cents, more nearly proportionate to the new base fare as compared with the original transfer charge of three cents and base fare of five cents.

For the same reason the Commission is not inclined to make any further increases at the present time in the case of the commutation tickets or special tickets for employees of the Bethlehem Steel Company and Central Foundry, as such increases were in our former order

somewhat disproportionate to the amount of the increase in the base fare, this having been necessary at the time in order that such increase might be in convenient fractions of the cent.

The Company's estimate of 13,460,663 special fares was based upon its estimate of 240,777,100 revenue passengers for the entire year. Consequently the Commission's estimate of 243,000,000 passengers for the year, coupled with the fact that there will probably be a greater use of commutation books with the proposed readjustment of fares, would seem to justify the assumption that there will be a somewhat larger number of patrons paying these special fares in future than in the past. Without attempting to make a minute calculation based upon these factors, we have assumed that there will be approximately 14,000,000 users of these special fares during the year which will be covered by our order.

Deducting this figure from the 243,000,000 revenue passengers estimated by us leaves a balance of 229,000,000 revenue passengers who will have to make up the increase revenues required by the Company.

Any additional sums raised through increases in the fares will be subject to the park tax, which we find is 6.91 per cent. of the Company's total passenger revenues.

Since we know that one cent additional fare charged 229,000,000 passengers would yield $2,290,000, and that sum is far in excess of the amount which we conclude the Company properly requires under existing conditions, it is evident that whatever increase in the base rate of fare is made must be an increase of a fractional part of a cent, and will consequently involve the use of tickets or fare checks.

It is equally obvious that not all of the adult passengers of the Company will make use of these checks, and it therefore remains to determine what percentage of such passengers paying the full fare will probably use the same.

Mr. Zimmerman based his estimates of the probable yield of a seven-cent fare, with four tickets for twenty-five cents, upon the assumption that not less than eighty

per cent. nor more than ninety per cent. would avail themselves of the privilege of purchasing checks at the reduced rate. In the case of his estimates based on a seven-cent fare, with three tickets for twenty cents, he assumed that not less than seventy per cent. nor more than eighty per cent. of the passengers paying the full fare would use such tickets, the differences in these assumptions being due to the fact that in the case of four tickets for twenty-five cents there would be a saving of three-fourths of a cent on each individual ticket, whereas in the case of three tickets for twenty cents there would be a saving of but one-third of a cent on each ticket. In the case of Mr. Zimmerman's estimates as to the effect of a ten-cent base rate, with two tickets for fifteen cents, he estimated that between ninety and ninety-nine per cent. of the passengers would avail themselves of the reduced rate through the purchase of the two tickets for fifteen cents, in view of the saving of two and one-half cents on each fare through such purchases of tickets.

The Commission is inclined to think that Mr. Zimmermann's estimates of ticket purchasers in the case of four tickets for twenty-five cents or three tickets for twenty cents are rather high, and is confirmed in this belief by its studies of the experience of the Washington Railway and Electric Company and the Capital Traction Company, both of Washington, D. C., where the use of the five-cent cash fare or six tickets for twenty-five cents has continued from 1894 until about a year ago. In this case there was a saving of five-sixths of a cent with the purchase of each ticket. In addition, as we have seen, the ticket system has been in vogue in Washington for nearly twenty-five years, during which time the public has grown accustomed to the use of the tickets and thoroughly familiar with the advantages of their purchase.

The following table shows the comparatively recent experience of the Washington companies in this respect, these being the only figures available at the date of this opinion:

TABLE IX.

PER CENT. OF PASSENGERS USING TICKETS, WASHINGTON, D. C.

5c Cash or 6 Tickets for 25c.

W. R. & E. Co.	*Year*	*Capital Traction Co.*
	1900	77.0
	1908	80.9
83.62	1909	80.7
84.10	1910	80.9
84.44	1911	80.9
84.71	1912	80.8
84.88	1913	80.7
85.36	1914	81.2
84.95	1915	81.1
85.37	1916	80.9
85.05	1917	80.5

In view of the experience of the Washington companies as set forth in the above table, the Commission has concluded that it would be reasonable to assume that for the present at least the people of Baltimore may be expected to purchase tickets at reduced rates between the limits of fifty per cent. as a minimum and eighty per cent. as the maximum.

The following table shows the estimated yield of additional fares at different rates upon the respective assumptions that fifty per cent., sixty-six and two-thirds per cent., seventy-five per cent. or eighty per cent of patrons paying the full fare will use fare checks or tickets:

TABLE X.

ESTIMATED YIELD OF ADDITIONAL FARES AT DIFFERENT RATES.

Estimated additional revenue from increased fare base	243,000,000	passengers per annum
Less passengers paying other than full fare	14,000,000	
Number of passengers paying increased fare	229,000,000	

	Additional Yield			
	7c Cash Fare, 4 Tickets for 26c			
	50%	66 2/3%	75%	80%
Full base fare increase	$1,145,000	$763,333	$572,500	$458,000
Fractional fare increase	572,500	763,333	858,750	916,000
Total additional revenue	$1,717,500	$1,526,666	$1,431,250	$1,374,000
Less Park Tax	118,679	105,492	98,899	94,943
Net additional revenue	$1,598,821	$1,421,174	$1,332,351	$1,279,057
	7c Cash Fare, 4 Tickets for 25c			
Full base fare increase	$1,145,000	$763,333	$572,500	$458,000
Fractional fare increase	286,250	381,667	429,375	458,000
Total additional revenue	$1,431,250	$1,145,000	$1,001,875	$916,000
Less Park Tax	98,899	79,120	69,230	63,295
Net additional revenue	$1,332,351	$1,065,880	$932,645	$852,705
	7c Cash Fare, 3 Tickets for 20c			
Full base fare increase	$1,145,000	$763,333	$572,500	$458,000
Fractional fare increase	763,333	1,017,777	1,145,000	1,221,333
Total additional revenue	$1,908,333	$1,781,110	$1,717,500	$1,679,333
Less Park Tax	131,865	123,074	118,679	116,042
Net additional revenue	$1,776,468	$1,658,036	$1,598,821	$1,563,291

Mr. Zimmermann, in his testimony, gave virtually no explanation of or reason for his assumptions as to the minimum number of passengers who would purchase tickets, and there was no other evidence adduced at the hearings upon this point.

Under all the circumstances and after a careful study of this most important phase of the situation, the Commission has concluded that in the case of the sale of four tickets for twenty-six cents not less than sixty-six and two-thirds nor more than seventy-five per cent. of the patrons of the Company will use tickets, and that the proper estimate lies about midway between the two, or 70.833 per cent.

Applying these conclusions to the above figures in the case of four tickets for twenty-six cents, we find that the net increase in revenues, after the payment of the park tax, would be $1,376,762.

From this sum should be deducted the $805,524 wage increase less our estimated $506,127 balance to surplus under the six-cent fare without such wage increase, or $299,397, leaving a net balance to surplus of $1,077,365.

From this sum should be deducted the ten per cent. Federal income tax which the Company is required by law to pay upon its net income. Upon our estimate this would amount to $107,736, leaving a final balance to surplus of $969,629.

A summary of the above calculations will be found in the following table:

TABLE XI.

COMMISSION'S FINAL ESTIMATE OF EFFECT OF INCREASED FARE.

Net increase from additional full fare after deduction of park tax @ 6.91%		$1,376,762
Deduct wage increase	$805,524	
Less estimated balance to surplus subject to wage increase	506,127	
		299,397
Balance to surplus, 7c fare, 4 tickets for 26c		$1,077,365
Less Federal income tax		107,736
Final net balance to surplus		$969,629

We therefore conclude that the Company should be permitted by our order about to be passed to increase its existing six-cent adult or base charge to seven cents, and required to sell four tickets or checks representing this charge for twenty-six cents.

FUTURE MODIFICATIONS OF FARES

The Commission's order passed pursuant to this opinion will provide that the fares established therein shall remain in force and effect for one year from October 1, 1919, to September 30, 1920, unless earlier modified or abrogated by the further order of the Commission. Such order is not to be taken either by the Company or by the public as a guarantee that such fares will continue in force during the whole of that period.

In the course of our opinion we have pointed out that we are dealing at the present time with abnormal conditions, and this means that existing conditions may either remain fairly constant for some time into the future or may at any time grow materially better or materially worse so far as the Company is concerned. Our conclusions have been reached upon the assumption that they will remain practically constant during the coming twelve months.

Our order will further provide that the Company shall continue to furnish the Commission as heretofore accurate and complete monthly statements setting forth the number of revenue and transfer passengers carried, the number of car-miles operated, the cash receipts from operations and other sources, and the operating and other expenditures of the Company, all set forth in the manner prescribed by the rules of this Commission for accounting by street railway companies.

These reports will be scrutinized closely by the Commission and its staff as they are received from month to month, and if it appears at any time that our estimates of receipts and expenditures are so far wrong as to make it unjust either to the Company or to the public that the rates prescribed in our order be continued until the end of the year therein prescribed, steps will be taken at once to modify the same.

It is to be understood by all concerned that our order passed pursuant to this opinion is so far tentative that it can be reopened at any time within such twelve months upon the evidence adduced in this and the previous case and the monthly reports which will be furnished under oath by the Company as above stated.

In other words, there will be no necessity, during the coming year at least, for any lengthy, formal hearing upon applications for either the increase or decrease of the fares established by our order.

The Commission now has before it the complete operating figures of this Company for a period of approximately seven years, and there is now no necessity for further details as to such operations in the past or for further estimates of probable future operating results, except in so far as the estimates contained in this opinion may require modification from time to time by reason of actual results.

If it should happen that the experience of several months under the new rates should demonstrate that the Company is earning a larger net revenue than is anticipated by this order, and that there is a reasonable probability that such excess earnings during the course of the year would be such as to justify some reduction in the base rate of fare, the Commission will, of its own motion, require the Company to show cause why such decrease should not be made.

If, on the other hand, such reports, upon thorough investigation by the Accounting Department of the Commission and by the members of the Commission itself, should demonstrate that the Company is earning materially less than we now anticipate it will earn under such rates, the Company will be permitted to make an application for their increase, with the understanding that the Commission will confine the hearings upon such application, as far as it can reasonably do so under the law, to the precise issue of the rate necessary to yield approximately the net balance to surplus which we have declared a reasonable one for the Company to earn during the period of the next twelve months.

The order will further provide in substance that at the end of such period of twelve months the base rate shall revert to the present fare of six cents, unless it shall then be made to appear that some other rate than six cents is a proper rate thereafter to be charged by the Company.

Meanwhile the Commission expects to give much thought to the "Cost of Service" plan which has been adopted in the comparatively recent past by a number of cities in the United States and elsewhere for the better and more satisfactory regulation of fares to be charged by street railway companies.

The theory of these plans is in brief that the owners of street railway properties are entitled to receive from the public the actual cost of the service rendered, including in that cost the reasonable expenses of operation, maintenance, taxes, fixed charges and a fair return upon the fair value of the investment, with the proviso that as the cost of service increases the fares go up, and as the cost of service decreases the fares come down, such plans providing for the ready ascertainment of the pertinent facts without the necessity of prolonged hearings and investigations.

These cost of service plans are usually predicated upon the fair value of the property used in the service, that value either being fixed by the Commission or agreed upon by the public and the owners of the property.

Such plans have been adopted in Cleveland and Montreal, in both of which cities they have been reported to work with considerable satisfaction to the public as well as to the owners of the property. Somewhat similar plans have been authorized by the Massachusetts Legislature, and a modified form of the plant provided by the statutes of that State has been in use for some time in the city of Boston, where its result has been anything but satisfactory to the public at large. Such plans have also been tried in one form or another in many other cities with varying degrees of success or failure, as the case may be.

This Commission hopes within the course of the next few months to be able to formulate and present to the public a complete study of these plans with the results achieved thereunder in the various cities where they have been tried, and our conclusions in the premises. It may well be that the Commission's conclusions will be that legislation should be enacted to make provision for the adoption of plans of this general character in this State, in which event our recommendations will be made to the coming session of the General Assembly.

THE PARK TAX AND PAVING CHARGES.

Under certain ordinances of comparatively long standing, ratified by the General Assembly of Maryland in some instances, the United Railways and Electric Company of Baltimore is required at the present time to pay a tax amounting to nine per cent. of its gross receipts on certain lines, this sum going into the fund for the maintenance of the public parks of the city. This tax equates at the present time 6.91 per cent. of the total passenger revenues of the Company. Upon this basis, and upon the assumption that the Company's passenger revenues during the next twelve months will be $14,305,410, as estimated by the Commission, this tax will amount to the sum of $988,504.

This sum is very much greater than the amounts paid in previous years, this fact being due to the increased amount of patronage, in the recent annexation of parts of Baltimore and Anne Arundel Counties to Baltimore City, and to the recent fare increase from five to six cents and the present increase from six to six and one-half cents.

In addition to this large percentage of its gross receipts paid directly into the park fund, the Company also pays taxes to the city, counties and State on its real estate, and is also required by law to pave between its tracks and for two feet on either side thereof, and keep such paving in repair.

These forms of taxation were all adopted in the case of the Railways Company before the days of regulation, and at a time when it was assumed that what the

public got through these forms of taxation came out of profits which the stockholders would otherwise have received.

Under regulation, where the effort is to regulate the charges made by a public utility for the service rendered in almost exact proportion to the actual cost of such service, all these taxes go into and form a part of such cost, with the result that it is no longer a question whether the public at large or the stockholders will pay these taxes, but the question is whether the general public or the portion of the public getting the service of the utility shall pay the same.

In the case now before us, for instance, the sum of the park tax, general taxes and the paving charges to which this Company is subject amount to something more than the one-half cent which has been added to the fare. Without those charges the fare could have remained at six cents.

It is the purpose of the Commission to make a complete study of this subject in the immediate future, and determine what, if any, recommendation it should make to the Legislature.

In many other cities where the public has been confronted with much the same difficulties with respect to their street railway service as confronts the public of Baltimore, one of the first steps taken by the public to relieve the situation and lessen the burden upon the users of the street railways has been to abolish all or some of these forms of taxation.

The Commission is not prepared at the present time to make any recommendations in connection with any of these forms of taxes, and, in fact, has reached no definite conclusion itself as to what should be done in the premises.

ZONE EXTENSIONS TO NEW CITY LIMITS.

In the Six-Cent Fare case it was contended that the legal effect of that portion of Section 2 of Chapter 82 of the Acts of 1918, providing that all existing provisions of the Baltimore City Charter should be applic-

able to such portions of Baltimore and Anne Arundel Counties as were annexed to Baltimore City by that act, was to extend the provisions of Section 796 of the City Charter prescribing certain fares within the old limits of the city to such annexed portions of Baltimore and Anne Arundel Counties and thereby make uniform the fares within the limits of Baltimore City as enlarged by such act.

As was stated in our opinion in the former case, this question was submitted to the Commission's General Counsel, who advised the Commission that by the Public Service Commission Law the whole matter of the rates of fare proper to be charged by the Company had been committed by the Legislature in the first instance to determinations by the Commission, subject to review by the courts as in said law provided.

In the former case the Commission said the general question of fare zones should be made the subject of an independent study, and that this could not be done until the effect of the increased fares, on the basis of the existing zones, had been demonstrated by experience over a reasonable period.

That experience has now been had, with the results set forth in an earlier portion of this opinion. Those results demonstrated conclusively that it would not have been possible to make such extensions to the city limits under the six-cent rate of fare prescribed by our order in that case.

During the hearings in the case now before us numerous applications were filed asking the Commission to require the Company to extend its first fare zone to the new city limits in various directions, and the Commission caused a study to be made of the effect of extending the first fare zone to the new city limits on each of the lines of the Company.

A study of the situation confronting the Company through the extension of the first fare zone to the new city limits involves an understanding of the mileage of the present second fare zone, which remains outside the new city limits, and determination whether it would be

expedient to create a new zone out of the remaining portion of the present second fare zone or include such portion in the present third zone (which would then become the second zone). An alternative of this would be the entire elimination of the present second zone, which would mean carrying passengers a short distance beyond the new city limits for one fare. The Company's officials were of the opinion that where the portion of the present second zone extending beyond the city limits is less than two miles in length it should be added to the next zone or else be considered within the first fare zone, since it was obvious that great objection would be made to paying the full fare in a zone where the maximum ride permitted was less than two miles.

The following table shows the mileage remaining outside the new city limits:

TABLE XII.

MILEAGE OUTSIDE NEW CITY LIMITS.

	1st County Zone				
Line	In New City Limits	Outside New City Limits	Total	2nd County Zone	3rd County Zone
Pimlico-Pikesville	2.51	1.67	4.18	3.61	5.91
West Arlington-Gwynn Oak	5.94	.55	6.49		
Walbrook-Gwynn Oak.....	2.85	.55	3.40		
Woodlawn	.89	1.02	1.91		
Curtis Bay	4.12		4.12		
Towson	.83	2.12	2.95		
Catonsville	1.52	2.11	3.63		
Lakeside	1.59	.56	2.15		
Riverview	3.47	.78	4.25		
Ellicott City	.43	2.85	3.28	2.76	
Mt. Washington-Pikesville..	2.42	2.00	4.42		
Back River	2.10	2.61	4.71	2.87	
Sparrows Point-Dundalk ..	2.80	1.60	4.40	3.48	4.42

The following lines show a remaining mileage of less than two miles, and the portion of the zone remaining in the county would therefore have to be considered either as having been combined with the city zone or added to the next county zone:

West Arlington-Gwynn Oak
Walbrook-Gwynn Oak
Woodlawn
Lakeside
Riverview
Sparrows Point-Dundalk

The entire Curtis Bay line is in the new city limits and would have to be considered as eliminated under the proposed plan. Of the Pimlico-Pikesville line 1.67 miles of the second fare zone remains outside the new city limits. If this be added to the present third fare zone, this zone would have a mileage of 5.28 as compared with 5.91 miles on the present fourth fare zone of this line.

2.12 miles of the present second fare zone of the Towson line remain outside the new city limits; 2.11 miles of the second fare zone of the Catonsville line remain outside the new city limits; 2.85 miles of the present second fare zone of the Ellicott City line remain outside the new city limits, and 2 miles of the Mount Washington-Pikesville line remain outside the new city limits. Separate zones would have to be created in each of these cases.

The Traffic Department of the Company stated that eventually all of the Back River lines would be in the first fare zone, and it was accordingly considered as being eliminated.

The following table shows the number of passengers carried on each of the present second fare zones, together with the percentages such passengers bore to the total passengers carried during the entire year 1918 and first six months of the year 1919:

TABLE XIII.

NUMBER OF PASSENGERS CARRIED IN SECOND FARE ZONES.

Line	*Year* 1918	*% of Total*	*Six Months* 1919	*% of Total*	*Total Eighteen Months*	*% of Total*
Pimlico-Pikesville	1,400,171	.617	700,242	.594	2,100,413	.609
West Arlington-Gwynn Oak	155,318	.068	61,505	.052	216,823	.063
Walbrook-Gwynn Oak	127,173	.056	52,746	.045	179,919	.052
Woodlawn	192,668	.084	68,504	.058	261,172	.076
Curtis Bay	3,252,785	1.434	1,369,813	1.162	4,622,598	1.341
Towson	1,313,458	.579	667,191	.566	1,980,649	.575
Catonsville	1,118,288	.494	569,134	.483	1,687,422	.489
Lakeside	171,493	.076	96,507	.082	268,000	.078
Riverview	2,276,662	1.004	927,512	.787	3,204,174	.929
Ellicott City	1,144,994	.505	588,899	.499	1,733,893	.503
Mount Washington-Pikesville	64,014	.028	29,754	.025	93,768	.027
Back River	2,499,795	1.102	1,167,892	.990	3,667,687	1.064
Sparrows Point-Dundalk	7,211,094	3.179	3,453,795	2.928	10,664,889	3.093
Total	20,927,913	9.226	9,753,494	8.271	30,681,407	8.899
Total revenue passengers entire system	226,834,528		117,919,120		344,753,648	

The above table shows that for the year 1918, 9.226 per cent. of the total revenue passengers were carried in the second fare zones, and that during the first six months of 1919, 8.271 per cent. were so carried. As the summer months have a distinct influence on the county lines, the former percentage, 9.226, has been used hereinafter in preference to either the six months or eighteen months figures shown in the above table.

The following table shows the estimated loss in revenues from the extension of city zones in all cases upon the suppositions above set forth, the chief of such suppositions being that where the extension of an existing city zone to the new city limits would leave less than two miles of the first county fare zone, the first county fare zone will either be taken into the city zone or into the next county fare zone:

TABLE XIV.

ESTIMATED LOSS IN REVENUES FROM EXTENSION OF CITY ZONES.

Line	*Per Cent. of Loss*
Pimlico-Pikesville	100% of .617% or .617%
West Arlington-Gwynn Oak	100% of .068% or .068%
Walbrook-Gwynn Oak	100% of .056% or .056%
Woodlawn	100% of .084% or .084%
Curtis Bay	100% of 1.434% or 1.434%
Towson	10% of .579% or .058%
Catonsville	10% of .494% or .049%
Lakeside	100% of .076% or .076%
Riverview	100% of 1.004% or 1.004%
Ellicott City	10% of .505% or .050%
Mount Washington	100% of .028% or .028%
Back River	100% of 1.102% or 1.102%
Dundalk	100% of 3.179% or 3.179%

Total per cent. of revenue passengers eliminated		7.805%
(a) Estimated revenue passengers		243,000,000
Estimated Passenger Revenue		
(b) Under existing fares	$14,305,410	
(c) From fare increase	1,376,762	
		$15,682,172
(d) Average fare, entire system, new rate		6.453c
(e) " " " " old "		5.887c
(f) " fare in second fare zone during first six months of 1919		5.68c
(g) Assumed average fare in second fare zone, new rate		6.20c
(h) 7.805% of 243,000,000		18,966,150
(g) x (h) represents total loss from eliminating above second zones		$1,175,901

It will be noted that the above table assumes that but ten per cent. of the traffic originating in the second fare zones on the Towson, Catonsville and Ellicott City lines will be lost through the extension of the city zone to the new city limits the short distance required in each of these cases.

The above table shows that the effect of extending the city zone to the new city limits would be that the Company would sustain a loss in revenues of approximately $1,176,000 per annum, which is within $200,000 of the amount estimated by the Commission to be yielded by the new increase in fare. This would require the addition of

approximately one-half a cent to the new six and a half cent base rate, and bring the base rate up to at least seven cents flat.

Under these circumstances, the Commission cannot see its way clear at the present time to require these extensions to be made, and thinks it would be unwise to select any of these zones for such extensions until the new rate has been given a fair trial and it is seen what the yield thereof will be.

It may well be that experience with the new rates will demonstrate earnings in excess of those estimated by the Commission.

In such event, the Commission will have to consider the relative merits of what will no doubt be a general demand on the part of all the public for a reduction in the ticket rate from six and one-half cents to six and one-quarter cents each, and the demand of those residing in these second zones for extenions of the first zone. Or it may be that the rates will yield so much in excess of our estimates that the Commission will find its way clear to grant relief in all these cases.

But, on the other hand, it may happen that our estimates of earnings will be in excess of actual earnings, and that such actual earnings, even without any of such extensions, will be inadequate to meet the requirements of the Company and yield it the return to which we have declared it properly entitled.

This Commission has no more right to assume that its estimates will be excessive than it has to assume that they will be inadequate, and until they have been given an actual trial over a reasonable period of time we must decline to direct the extension of any of these zones.

An order will be passed embodying the principal conclusions in the aforegoing opinion.

ORDER No. 5120.

Before the Public Service Commission of Maryland.

Case No. 1682.

In the Matter of the Petition of The United Railways and Electric Company of Baltimore for a Modification of Certain Orders, Now in Force, Fixing the Rates of Fare to Be Charged by Said Company and for Permission to File, Publish and Put in Effect a New Schedule of Rates of Fare, Increasing Existing Rates, as Set Forth in This Petition.

Pursuant to the conclusions reached in the aforegoing opinion, it is, this 30th day of September, in the year Nineteen Hundred and Nineteen, by the Public Service Commission of Maryland,

ORDERED, (1) That Order No. 4608 entered by this Commission on January 7th, 1919, as modified and amended by Order No. 4646 entered on January 28th, 1919, and the first paragraph of Order No. 4609 entered on January 7th, 1919, be and they are hereby annulled and rescinded.

(2) That from and after this date and until September 30th, 1920, and for no longer, unless such period be extended for a further period as hereinafter provided, or this order be earlier modified or abrogated by further order of this Commission. The United Railways and Electric Company of Baltimore shall be permitted to charge and collect for the transportation of persons over its several street railway lines, in Baltimore City and vicinity, the following rates, fares and charges, to wit:

(*a*) Six and one-half cent fare when tickets or fare checks are purchased, or seven cents cash, for the conveyance of each passenger over twelve years of age, and four cents for each child between the ages of four and twelve years, on any of its lines between the points designated under the first general caption in its schedule P. S.

C. Md. No. 8, filed with this Commission August 28th, 1918, effective October 1st, 1918, or between intermediate points, in either direction, on any of such lines, except in the case of its Curtis Bay line, on which line The United Railways and Electric Company of Baltimore shall issue transfers entitling the holder to a continuous ride on such line as such transfers were issued on and prior to September 30th, 1918, except that the charge for such transfers shall be four cents instead of three cents, as theretofore.

(*b*) Full fare and half fare continuous trip tickets, good as fare on connecting lines, to be sold on the lines and between the points, on the Company's Gorsuch Avenue, East Monument Street (Orangeville), Third and Eighth Streets, Union Avenue, South Charles Street, Walbrook-Hillsdale, Shore lines and Ferry Bar lines, as designated in said schedule P. S. C. Md. No. 8, otherwise the regular fare to be collected between the points so designated.

(*c*) Four and one-half cents when paid by commutation tickets sold for use on the first county fare zone between the points so designated in the schedule P. S. C. Md. No. 8, aforesaid, and five cents when paid by commutation tickets sold for use on second and third county fare zones, between the points so designated in said schedule, said commutation tickets to be sold in the manners and subject to the conditions set forth in said schedule with respect thereto, the full fare in each of said cases otherwise to be paid.

(*d*) Four and one-half cents between Sparrows Point and Dundalk and four and one-half cents between Dundalk and Highlandtown when paid by employee's tickets from 20-trip books sold in lots to the Maryland Steel Company for distribution; five cents between Dundalk and Highlandtown and five cents between Highlandtown and city Points when paid by strip tickets sold in lots to the Central Foundry Company for distribution; and two and one-half cents on the Lakeside line when paid by tickets from 200-trip books sold to the landowners along such line, all such tickets to be subject to the conditions printed thereon and to the rules of the Company governing the use thereof, the full fare in each of said cases otherwise to be paid.

3. That during the period this order is in effect The United Railways and Electric Company of Baltimore shall sell on its cars and at its offices and waiting rooms tickets or fare checks which shall be honored for passage on its cars, at the rate of six and one-half cents each, which said tickets or fare checks shall be sold on the cars in quantities of four (or more, in the option of the Compan), and should the conductor of a car at any time be unable for any reason to sell a passenger desiring to purchase them at least four tickets or fare checks, then such passenger shall be required to pay but six cents fare.

4. That from and after the hour of midnight on the thirtieth of September, Nineteen Hundred and Twenty, said Company's right and privilege to charge and collect the increased fares authorized hereby shall cease and determine and said Company shall thereupon put in force and effect, and maintain until thereafter lawfully changed, the schedule of fares operative on the thirtieth of September, Nineteen Hundred and Nineteen, unless this Commission shall, in the meantime, by its order in writing, have modified, extended or superseded this order; provided, however, that if this order has not been so extended or superseded and there shall be pending on September thirtieth, Nineteen Hundred and Twenty, an application by said Company filed before August thirty-first, Nineteen Hundred and Twenty, for a continuance in whole or in part of the relief hereby granted, then the right to collect the fares authorized by this order shall continue until the determination by the Commission of said pending proceedings; and provided, further, that in case of any proceedings hereafter for the right to charge and collect fares in excess of those in effect on the thirtieth of September, Nineteen Hundred and Nineteen, the burden of proving the reasonableness of any such excess fare shall be and remain on said Company.

5. That The United Railways and Electric Company of Baltimore shall furnish to this Commission accurate and complete statements under oath, and in convenient form, setting forth the number of revenue and transfer passengers carried, and the number of car-miles operated, the cash receipts from operation and other sources, and the operating and other expenditures of the Company, all set forth in the manner prescribed by the rules of this

Commission for accounting by street railway companies, so soon as may be reasonably practicable and convenient after the end of each calendar month during the period this Order remains effective, and in no event later than the last day of the next succeeding calendar month, covering the operations of the Company during the next preceding month.

6. That the right of the respondent Company to charge and collect the fares in this order prescribed shall be held subject at all times during the period covered by such order, or any extension thereof which may hereafter be granted as aforesaid, to the right and power of this Commission to reopen this case in the light of the facts disclosed by the monthly reports aforesaid, or of other facts otherwise coming to the attention of this Commission, and modify the rates of fare by this order authorized to be charged and collected by the respondent Company.

AND IT IS FURTHER ORDERED, That a copy of this order be forthwith served upon the proper officers of the respondent, The United Railways and Electric Company of Baltimore, and that said Company, within ten days from the date of the service of such copy, advises this Commission in writing whether or not it will accept and abide by the same.

(C)

CASE NO. 1682, SUPPLEMENTARY OPINION FILED NOVEMBER 29, 1919, AND ORDER NO 5223.

SUPPLEMENTARY OPINION

Before the Public Service Commission of Maryland.

Case No. 1682.

In the matter of the petition of the United Railways and Electric Company of Baltimore for the modification of certain orders, now in force, fixing the rates of fare to be charged by said Company and for permission to file, publish and put in effect a new schedule of rates of fare, increasing existing rates, as set forth in this petition.

By the Commission: Filed November 29th, 1919.

The Commission's opinion in the above case was filed September 30th, 1919, and was accompanied by an Order No. 5120 in which it was ordered, as by law provided, that the petitioning company should advise the Commission in writing within ten days from the date of service upon it of a copy of such order whether or not it would accept and abide by the same.

Before the expiration of said ten days the Company requested and obtained on extension of such period for the purpose of giving its representatives further opportunity to study and analyze the opinion of the Commission upon which such order was based.

On October 20th, the company filed a petition for a modification of such order and opinion. In such petition the company alleged in substance that before, during and since the hearing in this cause its officials had been

engaged in a comprehensive study of plans for the improvement of the service and for the increase of carrying capacity of the service rendered; that its officials had hesitated to authorize large capital expenditures in view of prevailing high prices, but that in order to keep pace with and stimulate the growth of the City and in view of the seeming stabilization of prices, such officials were about to recommend to the company's directors the purchase of from three hundred to three hundred and fifty new cars, the improvement or reconstruction of approximately forty miles of track and the expenditure of substantial sums for improvement of the power situation, all aggregating a total capital sum of several million dollars.

The company further stated in its said petition that it was willing to continue the rates of fare established by said Order No. 5120 for a sufficient length of time to determine their adequacy or inadequacy both for the proper operation and maintenance of the property and for the establishment and maintenance of the balance to surplus which this Commission had declared in said opinion the company was reasonably entitled to earn, but believed that no fair test of such order could be had until certain of the Commission's estimates of receipts and expenditures, particularly as to maintenance and depreciation reserves, had been corrected, and the Commission's expressions relative thereto made so clear that they could not reasonably be misinterpreted by the public.

Other orders extending the time within which the company should signify its acceptance or rejection of Order No. 5120 were subsequently passed, and the petition finally came to a hearing on November 14th, 1919.

At this hearing counsel for the company apparently abandoned the request that the Commission's estimates as set forth in its opinion be corrected, but contended that it should be made more abundantly clear in the opinion that such estimates were in fact merely estimates and that if the Commission's estimates of expenditures were exceeded in actual operation without a corresponding saving in other estimates, the company would not necessarily be penalized thereby. Great

stress was laid upon the necessity of upholding the company's credit in the eyes of the investing public in order that capital necessary to make the improvement referred to in the petition and for refinancing might the more readily be secured, and it was contended that with the opinion as originally written, such credit was more likely to be impaired than strengthened.

It was also contended that Section four of the order should be amended in certain minor particulars.

After a careful study of the opinion in the light of the above criticisms, the Commission is unable to see wherein it is necessary that it should be corrected or modified in order to make it more absolutely clear that our estimates of probable receipts and expenditures were in fact merely estimates, and were in no sense meant to be limitations upon the company's right to make such expenditures for the operation and maintenance of its property as might be found reasonably necessary. When the Commission states in paragraph after paragraph of an opinion that its figures are merely estimates, heads its tables with the statement that the figures therein are merely estimates, and then finally concludes that portion of its opinion with a clear statement that all of its said figures are merely estimates, and that if such estimates turn out to be materially wrong, steps will be taken at once to modify the order, based upon the same, it is somewhat difficult to see how any reader of that opinion could possibly look upon such figures other than as estimates, or conceive them in any way to have been intended as limitations upon the right of the company to expend such sums for the operation and maintenance of its property as might be found by actual experience to be reasonably necessary.

In view, however, of the fact that in the haste with which our opinion in this case was prepared in order that the new rates should go into effect by October 1st, 1919, the Commission failed to make entirely clear just what balance to surplus the company should be permitted to earn under varying conditions in the future, we have concluded that it is desirable for us to file a supplementary opinion in which our views upon this im-

portant point will be so clearly set forth that there will be no reasonable ground for any misunderstanding as to the same.

In our original opinion in this case we stated in one place that the best interest of the public with respect to the company required that it should earn a balance of not materially less than one and a half times its fixed charges, or $1,500,000 per annum, after the payment of operating expenses, fixed charges, taxes and the making of reasonable allowance for its accident and depreciation reserves. Subsequently in that opinion we stated that the company was entitled to charge rates at the present time estimated to yield it a balance to surplus of approximately one million dollars after the payment of such expenses and charges and the making of such allowances. In that opinion we neglected to reconcile these two apparently conflicting statements, with the natural result that doubt has arisen as to exactly what may hereafter be our policy with respect to the rates authorized by the order passed pursuant to such opinion.

Pending the establishment of fares based upon a valuation of the company's property or the adoption of a plan, under which fares will be more or less automatically established upon the basis of actual cost of the service rendered, it is the belief of this Commission that an earning capacity of one and a half times the fixed charges of the company is reasonable and necessary and in the interest of the public. But we do not believe that the entire burden of earning this surplus should be placed upon the public at the present time and under existing circumstances. We feel that a portion of the responsibility for earning such balance to surplus should be met by the exercise of all reasonable economies and efficiencies on its part. But the Commission is not to be understood as undertaking to establish in the future rates and fares estimated to yield such a balance to surplus of $1,500,000, or to increase existing rates in order that they may yield such amount. We merely mean that it is not our intent to refuse such earning capacity, provided the company, by diligent, sensible economies and good service can produce such a surplus. If, in time, the balance to surplus under any existing rate of fare,

should come to exceed such $1,500,000, the Commission, of its own initiative, will proceed to consider the propriety of reducing the rates of fare then in force.

Pending the institution and coming into full effectiveness of such economies and increased efficiency, it was at the date of the original opinion and is now the view of this Commission that the rates of fare authorized to be charged by the company should be such as may reasonably be anticipated to yield a balance to surplus of approximately one million dollars ($1,000,000) after the payment of the company's operating expenses, taxes, fixed charges, and the making of reasonable allowances for the maintenance of the property and of its accident and depreciation reserves.

In other words, if, after exercising what may seem to the Commission to be reasonable economy and efficiency in the operation of its property, it appears that the company is unable to earn under the established rates such a balance to surplus of approximatly one million dollars, the Commission stands ready, upon request of the Railways Company, to reconsider the estimates set forth in its original opinion, and also the rates of fare authorized to be charged by our Order No. 5120 passed pursuant thereto.

But in fixing $1,000,000 as the minimum balance to surplus which the company should be permitted to earn under existing conditions, this Commission is not to be understood as undertaking to guarantee such balance to surplus at the expense of the public at any and all hazards.

It will be noted that we have conditioned our conclusion as to such balance to surplus, first, upon the exercise of reasonable efficiency in the operation of the property, second, upon the exercise of reasonable economies, and, third, upon the expenditures of no more than reasonable amounts for the maintenance of the property and of its accident and depreciation reserves.

In our original opinion in this case we had occasion to consider what, in our judgment, would constitute reasonable expenditures for the maintenance of the

property and reasonable allowances for the company's accident and depreciation reserves. This was necessary in order for us to reach a definite basis on which to establish the rates fixed by such order. We nevertheless appreciate the impossibility of determining in advance the exact amount of money to be expended upon any one item, particularly in a period of economic readjustment, such as the present. Table IV of the original opinion and our other estimates therein, are not, therefore, to be construed as placing a limit upon the amount which may be spent by the Railways Company on each item, but should be understood as constituting an expression of the Commission's opinion as to the sums which would probably be necessary. It may be that actual experience will demonstrate the need of larger appropriations or expenditures for some of the items therein contained, but in any application hereinafter filed for an increase in the rates prescribed by such order, the company must assume the burden of justifying any expenditures in excess of our estimates set forth in such opinion. Moreover it is the hope of the Commission that if there should be any increased expenditures in excess of such estimates, such increases may be offset by increased income or by reductions in other items brought about by strict economy and greater efficiency in operating methods.

This Commission would not, under any circumstances, feel justified in going farther than the above in giving assurances as to what will be its future action with respect to any public utility subject to its jurisdiction. And especially would we not feel so justified in the case of this particular company, as its monthly reports since the date of our original opinion and order have shown expenditures for maintenance and depreciation so greatly in excess of our estimates above referred to, and largely in excess of any expenditure heretofore made in like periods on account of such items. These reports have been scrutinized thoroughly by us as they have been received, and will be further scrutinized and analyzed by us in the event of an application for authority to charge fares in excess of those prescribed by our Order No. 5120. For the present we express no opinion thereon.

In view of this reluctance upon our part to commit ourselves in advance more definitely upon the specific point of fare increase in the event of expenditures exceeding the estimates upon which our order was based the Commission feels that both the Company and the public are entitled to a full and clear statement of the general policy which we expect to follow with respect to this particular utility during the reconstruction period upon which the world at large is now fully entered.

In our original opinion in this case we discussed at some length some of the problems of rate making before, during and since the World War.

If rates are to be based upon value, they must be based upon "fair present value", and conditions are still so far from normal that we would not feel justified at the present time in accepting present-day prices as conclusive of that fair value which should be used as the basis for the making of rates to remain effective for any considerable period in the future.

On the other hand we would not feel justified in continuing longer to fix rates upon the "war emergency" basis, since the theory of that method of rate-making was merely to preserve the *status quo ante* of the property and business during the period of the emergency created by the pendency of the war.

With the end of the war the time has come when we can no longer be satisfied merely to preserve the *status quo ante* of utilities subject to our jurisdiction. Rather has the time come for the inauguration of a truly constructive policy in the case of business enterprises of all kinds, our public utilities included.

If, before and during the war, there was any uncertainty as to the relations which should or would continue to exist between the public and our public utilities, now that the war is over, it is the time, of all times, when this question should be definitely settled, in order that both the utilities and the public should know what will be the policy of the State with respect to such utilities in the future. Upon no other basis than that of a full mutual understanding of the relative rights and obliga-

tions of our public utilities and the public, can the former go ahead and do the best there is in them toward rendering adequate service at reasonable rates to the public they have undertaken to serve.

With respect to the particular utility whose affairs are here under consideration, this Commission has had little or no difficulty in determining what should be its policy in the future.

Practically ever since the creation of the Public Service Commission of Maryland in 1910, this Commission has had before it for consideration questions concerning the property, affairs and operation of The United Railways and Electric Company of Baltimore. It is one of the largest public utilities which are fully subject to this Commission's jurisdiction. As we have pointed out in other of our opinions, its continued operation is of the utmost importance to the entire community which it has undertaken to serve. This Company's property is one of great value, and one which should not be jeopardized or needlessly impaired in value by the adoption on the part of this Commission of a narrow or illiberal policy with respect to its financial affairs.

Time and again we have had occasion to consider the question of the character of service actually rendered by the Company to the public, and as well the character of service which the property is susceptible of rendering with comparatively minor improvements and additions. More recently we have noted on the part of the management of the Company what has seemed to us to be a sincere desire so to operate the property as to render the public more adequate service than has been rendered at times in the past. This attitude apparently has been based upon a growing recognition of the fact that the public has rights in our public utilities which must not be subordinated on the rights of the owners of the property.

Our consideration of the Company's affairs has extended as well to its financial situation and requirements, and this Commission, from time to time in the past, has passed orders authorizing the issuance of securities of large aggregate value, for the betterment of the property and service.

With this intimate knowledge of the Company's affairs, acquired through a period of what is now nearly ten years, this Commission is firmly convinced that the present and future welfare of this community requires the preservation of the property of the Company and its continued operation in the service of the public not only unimpaired, but in a position to meet all reasonable demands incident to the growth of the city and community.

While the property of this Company nominally belongs to its stockholders, subject to mortgages held by its bondholders, the public itself is interested even to a greater extent than either the stockholders or bondholders in the continued proper operation and maintenance of such property.

In the case of operation, the public is the first to suffer from inadequate service. Inasmuch as proper service can never long be rendered in any line of business enterprise without reasonable compensation, it is incumbent upon the public to pay for the kind of service it desires, and such public cannot justly complain if it does not receive a character of service better than that for which it has paid.

But the requirements of the public will be by no means fully met merely by a satisfactory operation of the Company's present property and equipment.

The City of Baltimore is one of the most important commercial and industrial centres in the country. This growth during the past twenty years has been regular and consistent, and has kept pace fairly well with our other large cities. During this period it has been necessary for the Railways Company to add to its service equipment and property in order that it might keep up with the community which it has undertaken to serve. During the war the advantages of Baltimore as a commercial and industrial center, and as a place of residence as well, came to be appreciated to a greater extent than ever before, with the result that a new impetus was given to our city and it has now fully entered into an era of prosperity and growth the like of which it has never enjoyed at any time in the past. But the city

cannot continue to grow to advantage unless the street railway system continues to grow as well and keep abreast in all respects with the community which it serves.

It appears by the petition of the Company that it now has under consideration plans for the expenditure in the near future of three or four millions of dollars in the purchase of some three hundred to three hundred and fifty new cars, the improvement or reconstruction of approximately forty miles of track, and the general improvement of service.

This money is to be expended for the benefit of the public. The surplus which the Company accumulated in pre-war times, together with the depreciation reserves which had been accumulated under more favorable conditions, has been exhausted. Therefore the Company has no funds at the present time with which to make these improvements. Hence this large sum must be borrowed, and in order to borrow the same the Company must have credit with the investing public.

It is a well-known fact that there is at the present time an almost unprecedented demand for money to meet the requirements of the business world of today. The high prices being paid for commodities of all kinds, with their resulting promise of unusually large profits, are stimulating enterprise in almost every line of business endeavor. Foreign governments as well as our own government are offering higher rates of interest for the use of money than they have paid for generations past. The securities of large and hitherto most prosperous public utilities throughout the country are being bought in the open market at abnormally low prices in order that purchasers thereof may assure themselves of an interest yield materially in excess of the return with which they were satisfied prior to the war. The daily papers are full of offers of all kinds of securities issued by business enterprises of the highest standing, and which are so much in need of money for further development that they are willing to pay unusually high prices for the use of the same.

Companies with assets in some instances of a value

several times in excess of their outstanding obligations and with assured earnings three, four, five and six times their interest charges, are offering six and seven and in some instances as high as eight per cent. for the use of funds with which to further develop their business.

With such a demand for the use of money, investors are demanding substantial security for their loans, and are insisting that there be both a substantial equity in the property over the amount of funded securities and assured earnings largely in excess of the aggregate interest charges thereon. If less than this is offered, the investors will either decline to make the loan upon any terms whatsoever, or will insist upon an abnormally high rate of interest in order to compensate them for the additional risk taken in making the investment. This last means either that the interest rate itself must be abnormally high or that the securities be sold at a discount which will yield the desired rate.

In the case of a public utility, where securities are sold at a discount with the consent of the state regulatory body, the utility is entitled to charge the public in addition to what would otherwise be the cost of the service the amount necessary to amortize such discount during the life of the security. Where, on the other hand, the interest rate is made abnormally high with the consent of the state regulatory body, good faith requires that the purchasers of such securities be protected in their investment by the fixing of rates which will enable the utility to pay such abnormally high rate of interest.

Thus, in either event, the public is the one to suffer most where the financial credit of any of its utilities is so far impaired that it is obliged to pay abnormally high prices for the loan of funds to be used in improving its property or service for the benefit of the public.

It follows that the prospective investors shall be given reasonable assurances of earnings materially in excess of the Company's interest charges.

The present interest charges of the Railways Company amount to approximately three million dollars. It is this Commission's judgment that a balance to sur-

plus varying from approximately one million five hundred thousand dollars as the maximum, both conditioned as hereinbefore set forth, and the latter subject to increase with increases in the Company's funded debt, would not only provide fair and reasonable compensation to the Company for the service which it expects hereafter to render the public, but would in addition give the Company such credit with the investing public as will enable it to secure upon reasonably favorable terms the capital necessary for all its corporate requirements.

For the reasons herein stated the application of the Company for a modification of the estimates contained in our original opinion will be refused, but inasmuch as it appears that the changes, which the Company's representatives suggested should properly be made in Paragraph Four of our Order No. 5120, a new order will be passed embodying such changes.

ORDER NO. 5223

Before the Public Service Commission of Maryland

Case No. 1682.

In the matter of the petition of the United Railways and Electric Company of Baltimore for a modification of certain orders. Now in force, fixing the rates of fare to be charged by said Company and for permission to file, publish and put in effect a new schedule of rates of fare, increasing existing rates, as set forth in this petition.

Pursuant to the conclusion reached in the aforegoing opinion, it is this 29th day of November, in the year nineteen hundred and nineteen, by the Public Service Commission of Maryland,

ORDERED: That paragraph 4 of Order No. 5120 entered in this cause by the Commission on September 30th, 1919, be and is hereby modified and amended so as to read as follows:

> "That from and after the hour of midnight on the 30th of September, 1920, said company's right and privilege to charge and collect the increased fares authorized hereby shall cease and determine and said company shall thereupon put in force and effect, and maintain until thereafter lawfully changed, the schedule of fares operative on the 30th of September, 1919, unless this Commission or other lawful authority shall in the meantime have modified, extended or superseded this order; provided, however, that if this order has not been so extended or superseded, and there shall be pending on September 30, 1920, an application by said company filed before August 31st, 1920, for a continuance in whole or in part of

the relief hereby granted or increased fares, then the right to collect the fares authorized by this order shall continue until the determination by the Commission of said pending proceedings; and provided, further, that in case of any proceeding hereafter instituted before the 30th day of September, 1920, for the right to charge and collect fares in excess of those in effect on the 30th day of September, 1919, the burden of providing the reasonableness of any such excess fare shall be and remain on said company; provided, however, that nothing in this order shall be held to affect in any way the right of the company to proceed with the pending valuation to which said company is a party or its right to appeal from the finding or orders growing out of said valuation proceedings."

AND IT IS FURTHER ORDERED: That except as hereby modified and amended Order No. 5120 aforesaid shall be and remain in full force and effect.

AND IT IS FURTHER ORDERED: That a copy of this order be forthwith served upon the proper officers of The United Railways and Electric Company of Baltimore, and that said company, within ten days from the date of the service of such copy, advise this Commission in writing whether or not it will accept and abide by Order No. 5120 aforesaid as modified and amended by this order.

JNO. MILTON REIFSNIDER,

JAMES C. LEGG,

J. FRANK HARPER.

Commissioners.

(D)

CASE NO. 1682, OPINION FILED DECEMBER 21, 1919, AND ORDER NO. 5237.

OPINION.

Before the Public Service Commission of Maryland.

Case No. 1682.

In the Matter of the United Railways and Electric Company of Baltimore for a Modification of Certain Orders, Now in Force, Fixing the Rates of Fare to be Charged by said Company and for Permission to File, Publish and Put in Effect a New Schedule of Rates of Fare, Increasing Existing Rates, as Set Forth in This Petition.

Appearances:

Messrs. Joseph C. France, Edwin G. Baetjer and W. H. Maltbie, representing The United Railways and Electric Company of Baltimore;

Joseph S. Goldsmith, Esq., Assistant General Counsel, representing the Public Service Commission of Maryland.

By the Commission. Filed December 31st, 1919.

On October 1st, 1918, all fares of The United Railways and Electric Company of Baltimore were increased one cent each, the only exception being on the Curtis Bay line of said company, on which line the railway company had theertofore issued a three-cent continuous fare ticket, which was withdrawn on that date, with the result that persons transferring to or from this line were required to pay two cash fares of six cents each, or twelve cents for the ride formerly costing by eight cents. On Janu-

ary 7th, 1919, the Commission filed its opinion and entered its order in Cases Nos. 1568 and 1583, in which it upheld the reasonableness of the increased fares, save the fare on Curtis Bay line, on which line it required the railway company to restore the sale of continuous fare tickets at the rate of four cents each.

Thereafter the railway company petitioned the Commission for a further increase in fares, and on September 30th, 1919, the Commission filed its opinion and entered its Order in Case No. 1682, permitting an increase in the adult cash fare from six cents to six and one-half cents when tickets or fare checks were purchased in lots of four, or seven cents cash fare. No increase was permitted in the fares charged children or commutation fares. The increase allowed by the Commission was somewhat less than that sought by the railway company, it being the contention of the company that a fare of seven and one-half cents was essential if it was to continue rendering adequate service to the public it served, and if it was to preserve its credit so that it might attract the necessary capital required to provide for additions to and improvements in its service requisite to meet the growing demands of the community which it serves.

On December 26th, 1919, the railway company petitioned the Commission for a further increase in the adult cash fare to seven cents straight, and this application came on to be heard on December 30th.

A complete history of the railway company and of its operations has heretofore been given in the opinions of the Commission above mentioned, and the attitude of the Commission with respect to the needs and requirements of said company has been discussed at considerable length in such opinions, as well as in supplemental opinion filed in Case No. 1682 on November 29th, 1919.

The previous hearings of the Commission upon the several applications of the railway company for fare increases were most exhaustive, and the records in those cases constitute a thorough history of the financial situation of the company. Paragraphs 5 and 6 of the Commission's Order No. 5120 entered in Case No. 1682 on September 30th, 1919, provide as follows:

"That The United Railways and Electric Company of Baltimore shall furnish to this Commission accurate and complete statements under oath, and in convenient form, setting forth the number of revenue and transfer passengers carried, and the number of car-miles operated, the cash receipts from operation and other sources, and the operating and other expenditures of the Company, all set forth in the manner prescribed by the rules of this Commission for accounting by street railway companies, so soon as may be reasonably practicable and convenient after the end of each calendar month during the period this order remains effective, and in no event later than the last day of the next succeeding calendar month, covering the operations of the company during the next preceding month.

That the right of the respondent company to charge and collect the fares in this order prescribed shall be held subject at all times during the period covered by such order, or any extension thereof which may hereafter be granted as aforesaid, to the right and power of this Commission to reopen this case in the light of the facts disclosed by the monthly reports aforesaid, or of other facts otherwise coming to the attention of this Commission, and modify the rates of fare by this order authorized to be charged and collected by the respondent company."

In its opinion filed on the same day the Commission said:

"It is to be understood by all concerned that our order passed pursuant to this opinion is so far tentative that it can be reopened at any time within such twelve months upon the evidence adduced in this and the previous case and the monthly reports which will be furnished under oath by the company as above stated.

In other words, there will be no necessity during the coming year at least for any lengthy formal hearing upon applications for either the increase or decrease of the fares established by our order.

The Commission now has before it the complete

operating figures of this company for a period of approximately seven years, and there is now no necessity for further details as to such operations in the past or for further estimates of probable future operating results, except in so far as the estimates contained in this opinion may require modification from time to time by reason of actual results.

If it should happen that the experience of several months under the new rates should demonstrate that the company is earning a larger net revenue than is anticipated by this order, and that there is a reasonable probability that such excess earnings during the course of the year would be such as to justify some reduction in the base rate of fare, the Commission will, of its own motion, require the Company to show cause why such decrease should not be made.

If, on the other hand, such reports, upon thorough investigation by the Accounting Department of the Commission and by the members of the Commission itself, should demonstrate that the Company is earning materially less than we now anticipate it will earn under such rates, the Company will be permitted to make an application for their increase, with the understanding that the Commission will confine the hearings upon such application, as far as it can reasonably do so under the law, to the precise issue of the rate necessary to yield approximately the net balance to surplus which we have declared a reasonable one for the Company to earn during the period of the next twelve months."

The application now before the Commission is filed under the above quoted provisions of the Commission's opinion and order, and the issue is thereby confined to the question of the rate of fare necessary to provide a balance to surplus of approximately One Million Dollars during the ensuing year, which amount the Commission has heretofore found to be reasonable during such period.

The monthly reports of the company's earnings and

expenses required by the Commission's Order No. 5120 have been duly filed with the Commission, the balance to surplus during October and November, 1919, (the first two months of operation under the present fare) being $18,124 and $36,991, respectively, while the average pre-war surplus during the corresponding months is shown to be $86,309 and $59,873, respectively.

The following facts are set forth in the petition of the railway company in justification of the increase in fares now sought:

1. The Commission estimated that but 70.833% of the total number of passengers would avail themselves of the privilege of buying fare checks, whereas during the first twenty-three days of December the actual figure was 89.56%, which larger use of fare checks results in a shortage in income of approximately $200,000 for a year.

2. The tax rate of the City of Baltimore has been increased from the 1919 rate of $2.01 per hundred to $2.97 in 1920, with increases in the new annex and rural rates from $1.206 to $1.84 and from 67c to 99c, respectively, entailing an additional expenditure during the year upon the part of the company of $109,598.45.

3. The company paid $66,000 to the City of Baltimore for duct rentals during the year 1919, while under a pending ordinance of the Mayor and City Council of Baltimore the rental will be increased to $118,800 per annum, or $52,800 in excess of the 1919 figure.

4. An increase in the price of coal involving an additional expenditure of $20,000 per annum, with the likelihood of a further and substantial increase in the price of fuel in the near future.

5. An increase in the cost of supplies used by the company of from $75,000 to $100,000 per annum above the prices paid for similar quantities of such articles used during the current year.

6. The necessity of making some allowance to

the company's platform employees for time consumed in taking cars to and from car-barns, which will involve an additional payment of $91,250 per annum.

7. The need for setting aside a greater depreciation reserve than has been provided for, it having been previously shown that the cost of labor and materials used in maintenance and replacement work has increased 101% over the 1916 cost, and that if the depreciation appropriation for 1916 is increased by 101% and a reasonable depreciation allowance made on the capital additions since 1916, the depreciation reserve for 1920 will be $454,311 in excess of the Commission's estimate of $710,370 for 1919.

At the hearing upon this petition the petitioner produced its president, C. D. Emmons, as a witness to substantiate the statements of the company respecting the increased expenditures which it will be obliged to provide for during the ensuing year, as well as the need for a greater depreciation reserve, and Mr. Emmons introduced and filed with the Commission various exhibits in support of the claims of his company.

Some of these items of additional expense have already been encountered by the company, and the others are almost certain to be realized. It is impossible to foretell to what extent some of the items will still further increase, this having particular reference to the price of coal. We are all aware that a body appointed by the President of the United States is shortly to take up the question of the relations existing between the coal miners and the coal operators, and if as a result of this investigation the wages of the miners are again increased, the burden of such increase will in all probability come to be borne by the coal consuming public, including the petitioner.

The Commission is not prepared at this time to accept the claim of the railway company that its depreciation reserve should be increased in order to meet the increased cost of renewing and replacing property in kind. The contention of the railway company involves a distinct departure from the long established practice

with respect to the handling of this matter, the accounting rules of this Commission, as well as the accounting rules of most other regulatory bodies (so far as the Commission is informed) providing that the difference between the original cost and the cost of renewal or replacement, where such latter cost is higher, should be charged to capital account. But the Commission does not feel that it is necessary for it in the present proceedings to pass upon the broader question of depreciation which is presented by the company's petition. Nor does the Commission find that it is necessary for the purposes of this case to attempt to indicate what, in its judgment, would be the proper amounts, or even the maximum amounts, which the railway company should be permitted to expend for maintenance, and set aside as a depreciation reserve. The conditions surrounding the cost of both wages and material are too unsettled to warrant any conclusion which might be construed to be the adoption of anything like a fixed or permanent policy with reference to either maintenance or depreciation. But dealing with the present situation with which the railway is now confronted, the Commission finds that under existing conditions, which conditions are likely to continue at least during the ensuing year, the total amount which the company claims it will require for maintenance and depreciation does not appear to be unreasonable, when consideration is given to the amount of maintenance and renewal work now being done by the company, and which it will have to continue for a considerable period of time in order to get its property in condition to render the best possible service to the community which it serves; nor does such total allowance appear unreasonable when compared with similar allowances of other railway companies, such comparison being made on a car-mile basis.

As before shown, the balance to surplus after the payment of operating expenses, taxes and fixed charges during the months of October and November aggregated $55,115, and the December balance is estimated to be about $30,000, or about $85,000 for three months' operations at the present rate of fare. The increase in the tax rate, the higher conduit rental, the known increase in the price of coal, the increase in the cost of supplies, the

allowance to platform employees for time consumed in taking cars to and from car-barns, and additional fixed charges of approximately $120,000 per annum, when taken together, will be sufficient to reduce the balance to surplus likely to accrue during the ensuing year at the present rate of fare to an almost negligible amount, and unless there is a material increase in traffic, will be sufficient to wipe out completely any possible surplus. The company's balance to surplus during the current year will be $161,594, using the estimated figure of $30,000 for December. This is the lowest balance to surplus earned in any of the years since 1912, as shown by the following table:

BALANCE TO SURPLUS BY YEARS.

Year.	*Balance.*
1912	$678,042
1913	972,322
1914	819,368
1915	819,368
1916	1,108,124
1917	875,587
1918	332,652
1919	*161,594

* December estimated.

It is impracticable to attempt to project the earning for 1919 into 1920 on the basis of the balance to surplus shown for 1919, as the wage increase of August 17th, 1919, (involving an additional expenditure of over $800,000 per annum) and the present rate of fare, which became effective on October 1st, 1919, have been in effect for but a portion of the year. On the basis of the number of riders during the year 1919, the straight fare of seven cents will produce additional revenue over the present fare of seven cents each with 6½ cent tickets (90% tickets, 10% cash fares) of about $950,000 for the year, after deduction of Park Tax, and if there is an increase of 7% in the traffic of the company in the year the additional revenue produced by the increase in fare will be approximately $1,025,000, the true figure probably being somewhere between these two.

After full consideration of all of the facts which have

bearing on the matter, and having made a careful estimate of income and expenses for the ensuing year, the Commission is of the opinion that while the company might possibly be able to continue its operation on a rate of fare fractionally lower than the full increase now sought (though higher than the present rate of fare) the saving to the riding public through such fractional rate of fare would be very slight, while on the other hand it might prove to be the real balance between success and failure on the part of the company. Were the Commission to prescribe a rate of fare lower than that necessary to provide for the full reasonable needs of the company, the result might easily be that the company would again be compelled to struggle along as it has struggled since 1917; barely able to meet its pressing obligations, its credit impaired, and ultimately destroyed; unable to maintain its property or give the character of service rightfully and reasonably demanded by the public.

A tabulation of the difference in revenue obtained through the sale of fare checks at fractional fares shows that a reduction under the maximum fare of seven cents as slight as that obtained through the sale of eight fare checks for 55 cents, with only 70% of the riders availing themselves of the lower fare, would aggregate approximately $200,000 for the year, and to that extent cause a shortage in the balance to surplus of approximately $1,000,000 claimed by the company, and which balance the Commission has heretofore found to be reasonably necessary for the company's purposes.

The Commission has therefore concluded that the interests of the entire public will be served best by allowing the company to charge a rate of fare of seven cents, and its previous orders will be modified so as to permit such change to become effective on January 1st, 1920. The present fares for children, as well as the present commutation book rates, will remain unchanged. The Commission will require the railway company to continue furnishing monthly statements showing the results of its operations, so that the Commission will thereby be kept in close touch with the situation, and in a position to take any further action in the premises which may seem warranted.

The Commission has the assurance of the railway company that a straight fare of seven cents will enable it to meet its financial requirements, secure needed equipment, get its road-bed and equipment in good operating condition and meet every reasonable demand for adequate service, and the Commission in permitting the increase prayed for is taking the company at its word, and will require the company to fulfill promptly its promise of improved service.

An order will be passed in accordance with the conclusions herein.

ORDER NO. 5327.

Before the Public Service Commission of Maryland.

Case No. 1682.

In the Matter of the Petition of The United Railways and Electric Company of Baltimore for a Modification of Certain Orders, Now in Force, Fixing the Rates of Fare to be Charged by said Company, and for Permission to File, Publish and Put in Effect a New Schedule of Rates of Fare, Increasing Existing Rates, as Set Forth in This Petition.

Pursuant to the conclusions reached in the aforegoing opinion, it is, this 31st day of December, in the year nineteen hundred and nineteen, by the Public Service Commission of Maryland,

ORDERED: 1. That except as to paragraph (1) thereof, Order No. 5120 entered by this Commission on September 30th, 1919, as modified and amended by Order No. 5223 entered on November 29th, 1919, be and it is hereby annulled and rescinded.

2. That on and after January 1st, 1920, and until midnight of December 31st, 1920, and for no longer, unless such period be extended for a further period as hereinafter provided, or this order be earlier modified or abrogated by further order of this Commission, The United Railways and Electric Company of Baltimore shall be permitted to charge and collect for the transportation of persons over its several street railway lines, in Baltimore City and vicinity, the following rates, fares and charges, to-wit:

(a) Seven cents fare for the conveyance of each passenger over twelve years of age, and four cents for each child between the ages of four and twelve years, on any of its lines between the points designated under the first general caption in its schedule P. S. C. Md. No. 8, filed with this Commission August 28th, 1918, effective Octo-

ber 1st, 1918, or between intermediate points, in either direction, on any of such lines, except in the case of its Curtis Bay line, on which line The United Railways and Electric Company of Baltimore shall issue transfers entitling the holder of a continuous ride on such line as such transfers were issued on and prior to September 30th, 1918, except that the charge for such transfers shall be four cents instead of three cents, as theretofore.

(b) Full fare and half fare continuous trip tickets, good as fare on connecting lines, to be sold on the lines and between the points, on the Company's Gorsuch Avenue, East Monument Street (Orangeville), Third and Eighth Streets, Union Avenue, South Charles Streets, Walbrook-Hillsdale, Shore line and Ferry Bar lines, as designated in said schedule P. S. C. Md. No. 8, otherwise the regular fare to be collected between the points so designated.

(c) Four and one-half cents when paid by commutation tickets sold for use on the first county fare zone between the points so designated in the schedule P. S. C. Md. No. 8, aforesaid, and five cents when paid by commutation tickets sold for use on second and third county fare zones, between the points so designated in said schedule, said commutation tickets to be sold in the manner and subject to the conditions set forth in said schedule with respect thereto, the full fare in each of said cases otherwise to be paid.

(d) Four and one-half cents between Sparrows Point and Dundalk and four and one-half cents between Dundalk and Highlandtown when paid by employees' tickets from 20-trip books sold in lots to the Maryland Steel Company for distribution; five cents between Dundalk and Highlandtown and five cents between Highlandtown and city points, when paid by strip tickets sold in lots to the Central Foundry Company for distribution; and two and one-half cents on the Lakeside line when paid by tickets from 200-trip books sold to the landowners along such line, all such tickets to be subject to the conditions printed thereon and to the rules of the Company governing the use thereof, the full fare in each of said cases otherwise to be paid.

3. That from and after the hour of midnight on the 31st of December, 1920, said company's right and privilege to charge and collect the increased fares authorized hereby shall cease and determine and said company shall thereupon put in force and effect, and maintain until thereafter lawfully changed, the schedule of fares operative on the 31st of December, 1919, unless this Commission or other lawful authority shall in the meantime have modified, extended or superseded this order; provided, however, that if this order has not been so extended or superseded, and there shall be pending on December 31st, 1920, an application by said company filed before November 30th, 1920, for a continuance in whole or in part of the relief hereby granted or for increased fares, then the right to collect the fares authorized by this order shall continue until the determination by the Commission of said pending proceedings; and provided, further, that in case of any proceeding hereafter instituted before the 31st day of December, 1920, for the right to charge and collect fares in excess of those in effect on the 31st of December, 1919, the burden of proving the reasonableness of any such excess fare shall be and remain on said company; provided, however, that nothing in this order shall be held to affect in any way the right of the company to proceed with the pending valuation to which said company is a party or its right of appeal from the finding or orders growing out of said valuation proceedings.

4. That The United Railways and Electric Company of Baltimore shall furnish to this Commission accurate and complete statements under oath, and in convenient form, setting forth the number of revenue and transfer passengers carried, and the number of car-miles operated, the cash receipts from operation and other sources, and the operating and other expenditures of the Company, all set forth in the manner prescribed by the rules of this Commission for accounting by street railway companies, so soon as may be reasonably practicable and convenient after the end of each calendar month during the period this Order remains effective, and in no event later than the last day of the next succeeding calendar month, covering the operations of the Company during the next preceding month.

5. That the right of the respondent Company to charge and collect the fares in this order prescribed shall be held subject at all times during the period covered by such order, or any extension thereof which may hereafter be granted as aforesaid, to the right and power of this Commission to reopen this case in the light of the facts disclosed by the monthly reports aforesaid, or of other facts otherwise coming to the attention of this Commission, and modify the rates of fare by this order authorized to be charged and collected by the respondent Company.

And it is FURTHER ORDERED: That a copy of this order be forthwith served upon the proper officers of the respondent, The United Railways and Electric Company of Baltimore, and that said company, within ten days from the date of the service of such copy, advise this Commission in writing whether or not it will accept and abide by the same.

JNO. MILTON REIFSNIDER,

JAMES C. LEGG,

J. FRANK HARPER,

Commissioners.

(E)

CASE NO. 1682, OPINION FILED MAY 26, 1924, AND ORDER NO. 8240.

PUBLIC SERVICE COMMISSION OF MARYLAND.

OPINION.

Before The Public Service Commission of Maryland.

Case No. 1682.

In the Matter of the Petition of The United Railways and Electric Company of Baltimore for a Modification of Certain Orders Now in Force Fixing the Rates To Be Charged By Said Company and For Permission to File, Publish and Put Into Effect a New Schedule of Rates as Set Forth in this Petition.

Appearances:

William Milnes Maloy, Esq., People's Counsel.

Charles C. Wallace, Esq., Assistant City Solicitor, for the Mayor and City Council of Baltimore.

Linwood L. Clark, Esq., representing the New Annex League and the Back and Middle River and Sparrows Point and Bay Shore Communities.

John L. G. Lee, Esq., representing Menlo Park, on the Park Heights Avenue Line.

Laurie H. Riggs, Esq., representing owners of property west of Rolling Road, on the Ellicott City Line.

John E. Dempster, Esq., representing the Sixteenth Ward Republican League.

Mr. Howard C. Price, representing petitioners using the Sparrows Point Line.

Joseph C. France, Esq., and William H. Maltbie, Esq., representing The United Railways and Electric Company of Baltimore.

By the Commission. Filed May 26th, 1924.

This is an application of The United Railways and Electric Company of Baltimore for an increase in fare in order that it may meet the growing transportation needs of the city, remedy certain inequalities in the service now being given, and earn a sufficient net revenue for the protection and preservation of its credit.

This application was filed with the Commission on March 31st. After reviewing the various proceedings before the Commission concerning the rates of fare, and referring to certain changes affecting the cost of furnishing the transportation service which have occurred since the present rates of fare were established, it concludes as follows:

"Your petitioner therefore prays that your Honorable Commission will investigate the matters and facts set forth in this petition, together with any other matters and facts which may be relevant or pertinent thereto, and that thereafter your Honorable Commission will fix and determine a schedule of fares and charges to be collected by your petitioner in such a way as to yield your petitioner an adequate return upon the value of its property or, if your Honorable Commission does not desire to make a valuation of the property of your petitioner at this time, such rates and charges as will yield your petitioner the net income of $1,500,000 which your Honorable Commission has declared to be reasonable and necessary and in the interest of the public, your petitioner believing and averring that it has exercised all possible diligence to secure said earnings by economy and efficiency of operation but has found it to be impossible to reach said earnings or even to reach the estimated earnings of $1,000,000 under the rates and charges permitted under the present order of your Honorable Commission.

> And further prays that, pending such final action and order, your Honorable Commission will continue in effect the relief heretofore granted and the rates and charges now in force."

In the opinion of the Commission, the Company was unfortunate in the manner in which it framed its petition. Instead of frankly stating its case and asking the relief to which it believed itself to be entitled, with the reasons therefore, it couched its request in ambiguous terms, the meaning of which was misleading to the public. The Company in its petition created the impression that it would be satisfied with a continuation of the seven cent fare provided no extensions of zones or improvements in service would be required, and that the rate of fare which it would need would be entirely dependent upon the number of extensions and improvements that would be required of it.

At the time the petition was submitted in this form, the Company knew it would not be satisfied with a seven cent fare, and its officials were convinced that the prospects of its earning enough to continue the existing service with no zone extensions or improvements whatever, and to maintain its credit, on that rate, were doubtful. That this conclusion is correct was shown in the course of the hearing, by flat statement of counsel and the testimony of C. D. Emmons, president of the Company, to the effect that the Company actually needed an increase of fare, and that in case an order should be passed continuing the seven cent fare pending a valuation of its property and the granting of a rate of fare based thereon, the Company would be compelled to make out another case before the Commission for an increased rate as emergency relief.

To this initial lack of frankness on the part of the Company is due, in the Commission's opinion, the public resentment with which the definite announcement of its needs were later received.

Even under favorable prospects for 1924, with a normal increase in riding in Baltimore, it is clear to the Commission that, with the seven cent fare maintained, the Company could make no zone extensions or other ser-

vice improvements, maintain its property and preserve its credit. The problem facing the Commission therefore is this:

Will the public be better served by continuing the present rate of fare with no zone extensions or service improvements, with the possibility of a further cut in service, or

Will it be better served by increasing the fare and securing the extensions and other things that can be secured only by an increase in fare.

Of one thing the public must be convinced. It must make up its mind to pay the cost of the service it receives. There is no magic in the operation of a street car system or any other utility that enables it to dodge the economic laws that affect the individual. When the Company has to pay twice as much for labor, and almost twice as much for everything else it uses, in producing a street car ride, it cannot sell its product at the price prevailing before its costs increased, any more than the individual can sell his labor at the prices prevailing before the startling increases in the cost of living, brought on by the war. The fact that the increase in cost to the user of street car transportation in Baltimore thus far has been only 40 per cent, while the operating costs of the railway Company have increased from $4,102,766 in 1915 to $9,799,312, in 1923, or more than double, and taxes have increased from $904,675 to $1,800,335, while costs in substantially all non-regulated commodities and service have increased from at least 50 per cent to 200 per cent, should indicate to the public the value it receives from the regulation of utilities.

Even a superficial examination of the figures should convince any reasonable man of the absurdity of the agitation for a return of the five cent fare at this time, or for any marked reduction in the present rate. Such agitation is either dishonest or is ignorant. A reduction in the rate of fare of from ½ to ¾ of a cent at this time would result, in the opinion of the Commission, in a receivership for the Company with all the disastrous results to the public that a receivership would bring about. Furthermore a material reduction in the fare rate would,

we believe, raise the question of confiscation of property without due return, which is prohibited by the Constitution and which the courts forbid.

It is not to be expected that the average citizen can acquaint himself with all the complexities involved in determining a just rate of fare, and he is not to be blamed when he forms his opinion from the statements of those who are supposed to know the truth, and whose business it is to find out the truth. But there is no excuse for those who know, or who, with reasonable diligence, can learn the exact truth of the situation when they attempt to mislead the public into believing it can get its street car rides for less than cost of production.

Many comparisons have been made, before, during and since the hearing, between the rates of fare paid in Baltimore and those paid in other cities. No just conclusions can be drawn from such comparisons because conditions in no two cities are fairly comparable. New York has a five cent fare, and incidentally the cost of giving a ride on the New York subways is estimated to be 7.31 cents, the taxpayers and investors losing the difference above the five cent rate. Cleveland has a six cent fare, with a charge for transfers which yields more than a million dollars a year in revenue. Baltimore has a seven cent fare, and pays more than a million dollars a year out of it for the support of the parks. Wilmington has an eight cent fare, Cincinnati has one of nine cents. Boston and Pittsburgh have ten cent fares. Chicago has a ten cent cash fare on its elevated and a seven cent cash fare on its surface lines, and so on. The fact that considerably more than 100 cities throughout the country have a base fare of ten cents is no reason why Baltimore should have a ten cent fare any more than that these cities should have the rate prevailing here, and the fact that other cities have a fare of five cents is no reason why Baltimore should have it.

Municipal requirements, municipal assistance, as in New York and Detroit, municipal guarantees, as in Cleveland, speed at which cars can operate through the streets, wages, length of haul, density of traffic, credit which determines the rate of interest the Company must pay on

the money it borrows and the extent of automobile and bus competition, are only some of the things which affect the rate of fare and which are seldom alike in any two cities. The local situation in every case must be studied and the conclusion be based only on the conditions found in each city.

The income of the United Railways Company depends upon two factors; the number of revenue passengers carried and the average fare. It has no other sources of large income, such as many other companies possess. With a city growing, as Baltimore is, an increase in the number of passengers carried each year would be expected. From the year 1909 until 1920 this was always the case with the exception of one year, 1915, in which fewer passengers were carried than in 1914. There was a sharp decline from 1920 to 1921 and a further decline in the number of revenue passengers carried in 1922. In 1923 there was a slight gain, a little over 2 per cent. The average gain for the years 1909 to 1920 was over 5 per cent a year. The following table gives the revenue passengers carried from 1909 to 1923:

Year	Revenue Passengers	Percentage of Increase
1909	145,601,990	
1910	154,925,785	6.40 per cent.
1911	161,467,727	4.22 " "
1912	172,283,341	6.67 " "
1913	182,180,767	5.76 " "
1914	185,296,350	1.71 " "
1915	181,744,023	— 1.92 " "
1916	199,158,285	9.58 " "
1917	212,893,619	6.90 " "
1918	226,834,528	6.55 " "
1919	243,890,966	6.80 " "
1920	253,934,179	4.11 " "
1921	238,090,980	— 6.24 " "
1922	233,732,146	— 1.68 " "
1923	238,658,390	2.11 " "

— Shows decrease.

The number of revenue passengers for the first four months of this year as compared with the corresponding months of 1923, according to figures submitted at the hearing, are as follows:

	1923	1924	Percentage of Increase
January	19,708,809	19,921,834	1.0800 per cent.
*February ...	17,770,508	18,588,563	4.6034 " "
March	20,680,781	20,162,742	—2.5049 " "
April	19,907,818	19,962,838	0.2764 " "
	78,067,916	78,635,977	

(* Large increase due to the one extra day in this month.)

These figures show there has been substantially the same amount of riding as there was last year and do not indicate that there will be any marked increase in the remaining months. The Commission, in its opinion of September 30, 1919, in discussing the increase in car riding during that year, said:

"This fact is unquestionably due to the more pronounced prosperity and business activity of the community following the cessation of hostilities. . . .."

This prosperity continued through the greater part of 1920 and the slump in business came in the latter part of that year with a consequent falling off of passengers from 253,934,179 in 1920 to 238,090,980 in 1921, and a still further falling off in 1922 to 233,732,146. A slight gain in 1923 brought the number of revenue passengers back to 238,658,380.

What are the causes that have operated to decrease the number of passengers riding on the United Railways so that in 1923 there were over fifteen million revenue passengers less than were carried in 1920?

It has been argued that the increased fare was responsible to a large extent. During 1919 there were two raises of the car fare, first to 6 cents and then to 6½ cents, and yet the riding increased during that year 6.8 per cent. The 7 cent fare went into effect on the first of January, 1920, and in that year the Railway Company

carried the greatest number of passengers in its history. The increased fares during 1919 and 1920 had very little effect in reducing the number of revenue passengers.

The reasons for the subsequent decreases in riding seem to be these:

First: The business depression beginning about the middle of the year 1920 unquestionably had a great deal to do with the falling off in the number of car riders. A number of plants on the outskirts of the City employing tens of thousands of men practically ceased operations and those that continued did so with greatly reduced forces.

Second: Another important factor in reducing the passengers on the street railway has been the remarkable increase in the number of automobiles. Figures are not available for Baltimore City separately, but the following table shows that for the State of Maryland the number of automobile licenses issued for the years 1918 to 1923, inclusive, has more than doubled.

1918	85,548
1919	105,689
1920	128,230
1921	148,419
1922	177,722
1923	217,393

It is reasonable to assume that what is true for the State as a whole is true for Baltimore, and that the increase in the number of automobiles in Baltimore is certainly not less than in the counties. Moreover, the effect of the automobile, besides decreasing the number of car riders, is widely to extend the residence districts, so that those who do use the street cars must be carried greater distances at corresponding greater costs to the Company. This, while a splendid thing for the City, increases the Company's expenses, and complicates its problems.

OPERATING EXPENSES.

The maintenance estimate of the Company for 1924 is increased by $25,760 due to increase in labor costs. The power service shows an increase from $1,312,621 to $1,-

315,081, or $2,460, also due to increased labor costs. Platform labor has increased from $3,995,475 to $4,075,385, or $79,910. Other transportation expenses are increased from $1,069,610 to $1,089,110, or an increase due to labor of $19,500.

The sum of $567,967 set aside for accidents and damages, is the same for 1924 as it was in 1923. In 1923 it was originally estimated that the amount required for this item would be $649,944. The Company's accident record during the year was kept down by a special Safety Drive and the Company felt justified in reducing the reserve for accidents and damages from 4 per cent to 3½ per cent of its gross receipts. This was testified to be one of the lowest reserves for this purpose of any large Company in the Country. The general miscellaneous item was increased, due to increased labor costs, by $8,500, from $865,286 to $873,786. The total operating expenses due to increased labor costs of $136,276 shows that if there is no increase in the car riding, these costs will increase from $9,799,312 in 1923 to $9,935,588 in 1924.

TAXES.

In 1923 the Company paid in taxes the sum of $1,800,335. The greatest single item of these taxes which the people have to pay through their car fares is the Park Tax. In 1923 this amounted to $1,130,913, or almost exactly one-half cent on each fare. In addition to this large percentage of gross receipts paid directly into the Park Fund, the Company also pays taxes to the City, County and State on its real estate. It is also required by law to pave between its tracks and for two feet on either side thereof and keep such paving in repair.

Special forms of taxation such as the Park Tax, paving requirements and the like, were all adopted before the days of regulation and at a time when it was assumed that what the municipality received in this way came out of profits which the stockholders otherwise would have received. In any system of regulation where the effort is to fix the charges made by public utilities in almost exact proportion to the actual cost of the service rendered, all of these taxes form a part of such cost, with

the result that the people who ride on the cars, must pay them in their car fares.

The other taxes, excepting the Park Tax and the Federal Income Tax, are estimated for 1924 to be the same as for 1923, or $521,923. The Federal Income Tax, it is estimated by the Company, with no increase in car riders, will be $39,402 less than in 1923, or $108,098. The reason for this decrease is that owing to the increase of labor and other expenses the net income of the Company for 1924, it is estimated, will be $219,579 less than in 1923, the Federal Income Tax being based on the net income of the Company.

DEPRECIATION.

The depreciation fund for 1924 is figured the same as the depreciation for 1923. It was testified in the case, however, that the depreciation reserve during the past four years had been expended in the retirement of worn out or obsolete property more rapidly than it had been provided. This is shown in exhibit No. 6, as follows:

JANUARY 1, 1920, TO JANUARY 1, 1924.

Year	Reserve Provided	Reserve Expended
1920	$865,679.94	$764,476.38
1921	816,643.27	1,139,769.25
1922	806,129.60	755,088.32
1923	823,089.94	744,948.56
	$3,311,542.75	$3,404,282.51

It was further testified that no part of the reserve expended was for the purpose of retiring cars; that the Company had, all told, 1930 cars including work cars, fifty of which should be retired each year. The Company declared it has not had sufficient depreciation reserve and testified that as it had not retired any cars during the past four years, it required an annual increase in the depreciation reserve of approximately $400,000 for this purpose.

Touching briefly on other features of the case it may be said that the Company's estimate of the gross income

for 1924 as compared with 1923 would be $116,903 less, or $4,072,187. This is before payment of fixed charges, dividends or any credit to surplus. The Fixed Charges for 1924 will be $92,676 more than in 1923, due to the interest charges on the recent issue of $4,000,000 of the bonds of the Maryland Electric Railways Company. This will make the 1924 Fixed Charges $3,315,500, and would give a net income for 1924 of $756,687 as compared with $976,206 in 1923.

EXTENSION OF ZONES.

Applications have been made for the extension of zones on all the lines operating in the City to the new City limits. These applications include:

Riverview line to be extended from Fifteenth Street and Eastern Avenue to Dundalk Junction. This would include the Canton section and the Riverview, St. Helena and Dundalk sections in the City zone.

The Sparrows Point and Bay Shore line patrons request that the City zone be extended from Fifteenth Street and Eastern Avenue to Dundalk Junction, the same point where it is desired to extend the Riverview line.

The Back River and Middle River line patrons request that this line be extended from Fifteenth Street and Eastern Avenue to the City limits. It has further been requested that the second zone be extended to Mace Avenue so as to take in the community of Essex, and also to wipe out the third zone entirely.

It has been requested that the one fare zone on the Harford Avenue line be extended from Hamilton to the City line.

Residents along the Pikesville line request that their City zone be extended from Rogers Avenue to Slade Avenue at the City line.

The request is also before the Commission to eliminate the 3 cent transfer charge on the Curtis Bay line.

COST OF ZONE EXTENSIONS.

It has been estimated by the Company that the cost of making these extensions of zones would be as follows:

Pikesville	$25,324
Readjustment of zones beyond Slade Avenue	15,228
Riverview-Dundalk	36,568
Back River line extension from the first zone to the City limits	35,158
Extension of the second fare zone from Back River to Mace Avenue in Essex	27,648
If the third zone on the Back River line were eliminated altogether it is estimated that the loss to the Company would be	95,055
Sparrows Point-Bay Shore line, zone extension	260,459
Curtis Bay elimination of the 3 cent transfer charge	69,164
Harford Avenue line extension	19,082

The cost of extending the first fare zones on all the lines to the City limits and eliminating the Curtis Bay transfer charge would be $426,673, and if all the requests made to the Company were put into effect, the additional cost would be $190,429, making a grand total of $617,102.

LOWER RATES FOR SCHOOL CHILDREN.

The Company, through its president, during the hearing, offered to give to the school children of Baltimore, over twelve (12) years of age, a special rate of five cents if its petition for a higher fare should be granted. The Company recognizes the fact that car fares become a burden to a family having a number of children over 12 years of age going to school. For each child in the family on the basis of a 7½ cent fare, there would be a saving of 25 cents per week. The saving with the present 7 cent fare would be 20 cents per week.

EFFECT OF THESE CHANGES ON RAILWAY'S INCOME

The Net Income of the United Railways & Electric Company in 1923 was $976,266. If all that has been requested of the United Railways should be done, the fol-

lowing expenditures would have to be made over and above those for 1923:

Extensions of zones and other readjustments....	$617,102
Increased labor charges and other expenses.....	258,705
The five cent fare to school children over twelve years of age	100,000
Total.....	$975,807

The difference between this sum and the net profit earned by the Railways Company last year is $459. This amount would be increased by deductions from the Federal Income Tax paid last year, as such taxes are paid only on the net income. The total net profit would be approximately, $130,000. The effect of such a reduction of its income would make it impossible for the Company to secure any money for improvements, new cars, or extensions of any kind. The Commission does not believe that it is possible to require any of the above listed expenditures with the car fare remaining at 7 cents.

EFFECT OF A 7½ CENT FARE

The Company presented an exhibit showing that if an 8 cent fare with two tokens for 15 cents were established it would secure increased receipts of $1,168,212. With such an increase in receipts, the Company said it would be able to carry out the following improvements:

Extension of all zones to the City lines and elimination of Curtis Bay transfer.....	$426,673	
Readjustment of zones on Pikesville line outside of the City	15,228	
Extension of the first fare zone of the Harford Road line on the tracks of the old Baltimore and Belair line to the City limits.....	19,082	
Five cent fare for school children over 12 years of age	100,000	
Extension of second fare zone on Back River line to Mace Avenue in Essex	27,648	
		$588,631
To which would be added:		
Increased labor costs, fixed charges, etc.....	$258,705	
Increased Taxes	115,000	
		373,705
Making a total of.....		$962,336

That is, out of the increased revenues of the United Railways of $1,168,212 which the increased fare would give, the Company would be immediately required to expend $962,336 and the net increase which would go into the surplus account of the Company would be $205,876, which, added to the surplus earned last year, $976,266, would give a surplus of $1,182,142, without making any allowance for increased depreciation for the retirement of cars, which the Company claims should be $400,000 a year.

WHY THE UNITED RAILWAYS NEEDS INCREASED REVENUE

It is the general impression that if the Company gets an increase of ½ cent in its fare it will receive the full benefit of this increase.

As a matter of fact, it is not anticipated that the stockholders will get one cent additional in dividends and as the rate of interest on the bonds is fixed by the terms of the bonds themselves, the bondholders cannot get any of the increase. The salaries of the managing and operating officials are fixed, and as far as the Commission is informed, no increases in the salaries of officials would be made as a result of the increased fare.

For what purpose, then, would the Company need the increase in gross revenues which an increased fare would yield?

It needs money in order to extend first fare zones on all lines to the City limits. That this is and has been considered by the Commission a desirable thing to do, is evidenced by its action during the past several years in forcing extension of fare zones either to or toward the City limits wherever the Commission has felt that the Company could possibly afford to make such extensions. Last year these included extensions to the City limits on the Halethorpe line, the Catonsville line, the Edmondson Avenue line, the York Road line and an extension from Pimlico to Rogers Avenue on the Pikesville line. It has been the policy of the Commission to extend these zones as rapidly as possible in order to wipe out inequalities in the length of the ride.

The grossest inequality which exists, however, is in connection with the three car lines going to River View, Sparrows Point, and Back and Middle Rivers. The length of the ride from the center of the City to the end of the first zone on these three lines is three miles. The length of the ride on the Belair Road, Harford Road, York Road, Roland Park, Mount Washington, Pikesville, Gwynn Oak, Hillsdale, Edmondson Avenue and the Frederick Road or Catonsville lines, is in each case over five miles from the center of the City and on some of them it is possible to ride over eight miles for one fare. If the 3 cent transfer charge on the Curtis Bay line—South Baltimore—were to be eliminated, the length of ride from the center of the City will be only five miles. It will thus be seen that the eastern and southern sections of Baltimore City, as compared with the northeastern, northern, northwestern and western parts of the City are discriminated against.

This situation is brought about by the fact that at the time of the annexation of 1888, the Highlandtown and Canton district refused to come into the City. When the fare limits were extended to the old City limits by the annexation act, this district got no fare zone extension benefits. For six years now this eastern section has been within the City limits and in the Canton district there are tracts of land available for industries with excellent railroad connections and water facilities. It has been stated to the Commission that industries hesitate, and in some instances refuse to settle in this district, because the employees of the plants would be compelled to pay two car fares to get to and from their work, although the ride would not exceed two miles for those living in the neighborhood of Patterson Park.

The Company also requires money for the maintenance of its credit. This is one of the most important of all the reasons why it needs increased revenue. Without credit, it cannot command the investment of new money in its property to meet the constantly expanding demands of the people for transportation facilities. This Commission in its opinion in the six cent fare case made this declaration:

"A State regulatory body could do no greater

harm to a community so entirely dependent upon the service of a street railway company as the public of Baltimore is dependent upon the service of the respondent Company than to refuse to permit it to charge such rates for its service as will enable it at all times both to command the investment of money necessary for the making of required extensions and continued maintenance of its property in efficient condition, and also to render such character of service as the needs of the community reasonably require. So to refuse would not only be to render it physically impossible for the Company to render adequate service, but would also be to drive the Company itself into a position of pecuniary decrepitude which would in the end result in bankruptcy and dissolution, after a long-drawn-out period of such inadequate service, during which the property and equipment would fall into a condition of disrepair which could only be corrected after the lapse of many years and the expenditure of many millions of dollars."

In the 6½ cent fare case in 1919, the Commission declared its conviction that in order properly to serve the public and maintain its credit, the Company ought to be allowed to earn a net surplus of approximately $1,000,000. It fixed a rate that it thought would yield the Company a net return of $1,000,000 and at the same time informed the Company that by diligent, sensible economies and good service, it ought to be able to increase this amount to $1,500,000. The Commission also declared:

"But in fixing $1,000,000 as the minimum balance to surplus which the Company should be permitted to earn under existing conditions, this Commission is not to be understood as undertaking to guarantee such balance to surplus at the expense of the public at any and all hazards."

In the course of the hearing just ended, the Company gave a list of the economies which it has effected during the past four years in the hope of increasing its net return to $1,500,000. These show a saving of approximately $1,000,000. Its officials also testified that since

1919 the following increased expenses beyond their control have taken place: Increased cost of labor, $136,000 running more car miles for few passengers, $475,000; increased power costs, $110,000; extension of zones, $160,000; increased fixed charges, $95,000; making a total of $976,000. In addition to this, the Company, in order to give better service, has installed unprofitable bus lines on Mount Royal Avenue and on Bentalou Street. It has also put in a trackless trolley on Liberty Heights Road, which has been operated at a considerable loss since its beginning. The loss on these bus lines and on the trackless trolley would unquestionably bring the increased expenses of the Company well over $1,000,000 and counter-balance any economies which the Company may have effected.

CONCLUSIONS

From the testimony submitted at the hearing and the additional information which the Commission has secured as the result of the investigations of its own staff, it has reached the following conclusions:

FIRST—There is nothing to indicate there will be any increase in the number of revenue passengers during 1924 over the number of such passengers in 1923. Therefore, there is no reason to believe that the income of the Company will be increased because of a greater number of riders. The failure of the Company to secure an increased number of riders, is very largely due, in the Commission's opinion, to the increased use of the automobile. The number of licensed automobiles in the State has increased in the last four years from 105,689 to 217,393. The constantly increasing use of automobiles will unquestionably tend to make those who must use the street cars pay a higher rate of fare. Anything that is done to decrease the number of riders on the railway will necessarily react to increase per rider the costs of maintenance and operation of the system, and under regulation where the fare is based almost wholly on these costs, the result of a decrease in the number of riders is to increase the fare of those who must continue to ride.

SECOND—There is no testimony which would lead the Commission to believe that the operating expenses of

the Company will be decreased unless the service it cut to a greater extent than it has already been cut. In fact, owing to the increased labor costs, the expenses for operation and maintenance will be $136,000 more in 1924 than was the case in 1923. The fixed charges in 1924 will be $92,676 more than in 1923.

THIRD—The Company has spent all the money set aside in the last four years for depreciation, in the replacement of tracks and structures and has made no retirements of cars. The Company is claiming at least $400,000 more for depreciation on its cars. Without attempting to say what allowance, if any, should be made for this specific purpose, we are convinced that the Company's depreciation allowance should be sufficient to permit it to retire a number of cars each year.

FOURTH—The Company estimates that its income for 1924 will be $756,687, or $219,579 less than it was in 1923 if the 7 cent fare is maintained. In order to increase this income so as to approximate the $1,000,000, which we believe is necessary properly to maintain the credit position of the Company, it would be necessary to make drastic cuts in the present service.

FIFTH—We unanimously agree that it would be impossible to require the Company to extend the fare zones to the city limits, eliminate the 3 cent transfer charge on the Curtis Bay line, adjust the county zones or give a reduced fare of 5 cents for school children over 12 years of age, if the 7 cent fare is maintained.

SIXTH—On the basis of an eight cent single fare or two tokens for 15 cents, the gross income of the Company, it is estimated, would be increased by $1,168,212. From this would be taken $588,631 for zone extensions and readjustments, and reduced fares for school children, and $373,705 for increased labor costs, taxes and fixed charges. This would leave the Company but $206,876 of the increased fare. This sum, added to $976,266 net income in 1923 before payment of dividends, would bring the net income for 1924 to $1,182,142. This would make the gross income of the Company approximately one and one-third times its fixed charges.

SEVENTH—It is our judgment that the best interests

of Baltimore require that all fare zones within the City should be extended to the City limits, that the three cent transfer charge to Curtis Bay should be eliminated and that a five cent fare for school children over twelve years of age should be granted. The residents of the eastern and southeastern sections of the City at present can ride only three miles from the center of the City for one fare, while in practically all other sections it is possible to ride from five to eight miles within one fare zones. This section of the City has been included within the City limits for six years and we believe the inequalities of riding in all justice and fairness should be eliminated. A large section of the City well served with railroads and with fine water frontage, ideally situated for industrial development is retarded in its development because of the two fares which must be paid to reach it by residents of the City who would naturally find employment there. The same arguments regarding the new annex south of the Patapsco apply both as regards to residents of that district and its industrial development with relation to the three cent transfer charge on the Curtis Bay line.

EIGHTH—In the 1919 fare case, the Commission said, that the physical valuation of the United Railways and Electric Company, "would be of little or no worth for rate making purposes at this time of abnormal property values and abnormal operating conditions." We believe that objection to a valuation no longer holds. During the last three years prices have remained fairly stable and, although on a plane considerably higher than existed before the war, there is nothing to indicate that there will be any material change within the next few years. We therefore conclude that the property of the United Railways should be valued for rate making purposes and that when the rate is fixed for 1925, it should be based upon the fair valuation of the Company's property used and useful in the public service. Therefore such a valuation will be ordered.

NINTH—While we realize that the Company is not in danger of being forced into a receivership if there is no increase in fares, it is our belief that the increased labor costs and interests charges for money recently put into the property will decrease the net income of the Com-

pany considerably below that of last year. It is our conclusion that such a result will mean stagnation in the affairs of the Company by making it difficult, if not impossible, to induce investors to provide money for any improvements or extensions in its tracks or structures or to purchase new and modern types of cars.

TENTH—Believing the benefits to be derived by the public by allowing the Company to collect an additional one-half cent on its base rate of fare, and requiring the expenditure of the bulk of what this increase will yield in gross revenue to the extensions of zones, reduced fare for school children and other requirements for the general good, far outweigh the disadvantage of such increase with the small burden it puts on the individual rider, this Commission will order that the rate of fare shall be increased from seven cents to eight cents for a single fare, with two tokens for fifteen cents.

It should be borne in mind that the Commission has no intention of allowing the Company to earn under this rate a net revenue more than sufficient to maintain its credit and give adequate service to the community. If the net revenue of the Company should exceed such an amount, the Commission will see to it that such excess is returned to the people either by a reduction in the rate of fare, or by its absorbtion in the giving of additional service.

The order will provide for the extension of zones, a five cent fare for school children over 12 years of age and other improvements which the Commission has hereinbefore indicated should be made. It will also direct the completion of the valuation proceedings inaugurated by this Commission in 1912, but because of conditions previously referred to in this opinion, never concluded.

The new rates will continue for eleven months from May 31, 1924, with the provision that if there should be pending before this Commission on April 30, 1925, these valuation proceedings, or any other proceedings affecting the rate of fare, the rates established by this opinion and its accompanying order shall be continued until the

determination by the Commission of the said pending proceedings.

An order will be entered in accordance with the conclusions herein.

Public Service Commission of Maryland, Chairman Whitman and Commissioner West.

DISSENTING OPINION

Before the Public Service Commission of Maryland.

Case No. 1682.

In the Matter of the Petition of The United Railways and Electric Company of Baltimore for a Modification of Certain Orders Now in Force Fixing the Rates of Fare to be Charged by said Company and for Permission to File, Publish and Put into Effect a New Schedule of Rates as Set Forth in This Petition.

HARPER, Commissioner (dissenting):

I regret that I cannot concur in the conclusion reached by my colleagues that The United Railways and Electric Company of Baltimore should be permitted to charge a higher rate of fare.

The rate of fare should not be increased unless the right of the Company to such increase is shown to be clear and conclusive. If the results of the operations of the Company under the seven cent fare during the year 1923 and the first three months of 1924, considered in connection with the facts developed at the hearing relative to the probable future volume of traffic and cost of operation, fairly indicate that the revenue to be derived may reasonably be anticipated to yield a balance to surplus substantially equal to the amount which this Commission has said it was entitled to earn, an increase in fare is not justified. The evidence in this case shows that in 1923 the Company did earn substantially such a balance to surplus, and in my judgment it may reasonably be expected to earn in 1924 a balance approximately equal thereto in amount under the present rate of fare.

On July 19th, 1918, the Company made its first application to the Commission for authority to increase the fare. In that case, known as the Six Cent Fare Case, it

was shown that from the year 1912 to the year 1917, inclusive, the average net earnings of the Company, after the payment of operating and maintenance costs, depreciation, taxes and fixed charges, had been $848,802. It was claimed that by reason of the higher wage scales then prevailing, the continuance of the then existing five cent fare would result in a deficit of $2,163,057 for that year, as compared with the pre-war period. The six cent fare was authorized, it being estimated that the additional one cent would result in an increased total revenue which would amount to but a few thousand dollars more than sufficient to pay the Company's operating and maintenance expenses, taxes, fixed charges and yield the average annual pre-war surplus of $848,802. The Company in its petition stated that "it is not intended that any part of the increased revenue hereby sought should increase the margin of profit which the Company had heretofore earned." And in a later opinion this Commission has said that it did not, in its opinion in the Six Cent Fare Care, "commit itself absolutely to the proposition that the Company should be permitted at all hazards increases in fares sufficient to yield its full and exact pre-war surplus."

On May 23rd, 1919, the Company made its second application for an increase in fare. In the supplemental opinion filed in that case, the Commission stated that it was its view "that the rates of fare authorized to be charged by the Company should be such as may reasonably be anticipated to yield a balance to surplus of approximately one million dollars ($1,000,000) after the payment of the Company's operating expenses, taxes, fixed charges, and the making of reasonable allowances for the maintenance of the property and of its accident and depreciation reserves."

The Commission further said:

> "But in fixing $1,000,000 as the minimum balance to surplus which the Company should be permitted to earn under existing conditions, this Commission is not to be understood as undertaking to guarantee such balance to surplus at the expense of the public at any and all hazards."

During the years 1912 to 1917, the balance to surplus earned, and which balance the Company, in its petition in the 1918 case above referred to, stated that it was not intended should be increased by the additional revenues thereby sought, was as follows:

Year	Balance to Surplus
1912	$678,042
1913	792,322
1914	819,368
1915	819,368
1916	1,108,124
1917	875,587

Average annual balance for the years under the five cent fare, $848,802.

On January 1, 1920, the seven cent fare became effective, since which time the annual balance to surplus has been as follows:

Year	Balance to Surplus
1920	$1,043,599
1921	635,231
1922	799,269
1923	976,266

Average annual balance for the above years under the seven cent fare, $863,591.

Excluding the years 1918 and 1919, which covered the period of rate revisions, the average annual balance to surplus from 1912 to 1923, inclusive, amounted to the sum of $854,717.

It also will be seen that there has not only been a steady though moderate increase in the net income since 1921, but that with the exception of two years 1916 and 1920, the Company earned a larger balance to surplus in 1923 than in any previous year. Furthermore, certain extensions of fare zones were made in 1922 and 1923 which the Company estimated would result in a loss of $160,000 in revenue, so that in addition to absorbing this loss the net income from $635,231 in 1921 to $976,266 in 1923.

While the Company claimed at the hearing that there would be an increase of $136,276 in the operating costs in 1924 by reason of the increased wage scale which became effective January 1st last and that there would also be an addition of $92,676 to the amount of the fixed charges, yet it is reasonable to expect that these additional costs and charges will be made up by the revenue received through an increased volume of traffic. In a large city such as Baltimore, with its steady growth in population and suburban development and its constantly expanding commercial and industrial activities, it is to be expected that the number of car riders will increase. New traffic and parking regulations applicable to the congested center of the city should prove helpful, if not by way of additional passenger revenue at least by enabling the Company to bring about a material saving in the cost of operation. The first three months of 1924 have shown an increase of $19,535 in the net earnings of the Company over the corresponding months of 1923. While the increase is partly attributable to the receipts from the extra day's operations in February of this year, this was fully offset by the higher wages paid under the new wage cale which went into effect on January 1st last.

A careful consideration of all the factors upon which a reasonable judgment may be based as to the probable extent and growth of the passenger traffic during the current year and the cost and expense incident to the operation of the system, in my opinion justifies the conclusion that the present fare of seven cents should enable the Company to earn this year a balance to surplus approximately equal to the amount of the balance to surplus earned in 1923.

I am not unmindful of the advantages to large portions of the community and indeed to the whole city of an extension of the fare zone and the establishment of school tickets, but notwithstanding the manifest desirability of such changes, I have not been able to reach the conclusion that the base rate of fare should be increased in order to bring about these results. The Commission some years ago adopted the policy of extending the first fare zone to the city boundary when and as the revenues of the Com-

pany permit, and in accordance with this plan these zones have heretofore been extended to the limits of the city on a number of the lines. With a normal increase in riding it should be possible gradually to extend the zones on the remaining lines without placing any additional burden upon the general riding public.

I agree with my colleagues that the property of the Company should be valued for rate making purposes, but feel that pending such a valuation there should be no increase in the present rate of fare.

ORDER NO. 8240.

Before the Public Service Commission of Maryland.

CASE NO. 1682.

In the Matter of the Petition of The United Railways and Electric Company of Baltimore for a Modification of Certain Orders Now in Force Fixing the Rates of Fare to Be Charged by Said Company and For Permission to File, Publish and Put Into Effect a New Schedule of Rates as Set Forth in This Petition.

The petition of The United Railways and Electric Company of Baltimore, filed herein on March 31st, 1924, having duly come on for hearing, and all proceedings in the said matter, including the testimony therein, having been duly read and considered by the Public Service Commission after argument on behalf of the respective parties interested in the said matter; and the Commission having this day filed its opinion in regard to the issues raised by the said petition and the proceedings resulting therefrom, containing its findings of fact in the premises and its conclusions in relation thereto, which said opinion is hereby referred to and made a part hereof.

IT IS THEREFORE, this 26th day of May, in the year Nineteen Hundred and Twenty-four, by the Public Service Commision of Maryland.

ORDERED: (1) That from and after midnight of May 31st, 1924, and until midnight of April 30th, 1925, and for no longer, unless such period be extended for a further period as hereinafter provided, or this Order be earlier modified or abrogated by further order of the Commission, The United Railways and Electric Company of Baltimore shall be permitted to charge and collect for the transportation of perons over its several street railway lines, in Baltimore City and vicinity, a base rate fare of seven and one-half cents when tickets or fare checks

are purchased, or eight cents cash, for the conveyance of each passenger over twelve years of age, and four cents for each child between the ages of four and twelve years, between any of the points designated in the schedule of the said Company filed with the Commission pursuant to the requirements of the Commission's Order No. 7383 entered herein on December 28th, 1922, or between intermediate points, in either direction, on any of such lines, except in so far as the zones on the said lines are hereinafter modified or changed.

(2) That the United Railways and Electric Company of Baltimore shall issue transfers, without charge, between its Curtis Bay line and other lines of the said Company, the purpose of this provision being to abolish the charge of three cents now made for transfers to and from this line under certain conditions.

(3) That The United Railways and Electric Company of Baltimore shall place on sale school tickets which said tickets shall be sold at the rate of five cents per ride and shall be honored for the transportation of children over twelve years of age attending public, parochial and private schools, including high schools, subject to such reasonable restrictions upon the sale and use of the said tickets as the Company shall prescribe, subject to the approval of the Commission.

(4) That changes be and they are hereby made in certain of the existing fare zones of The United Railways and Electric Company of Baltimore as hereinafter set forth, the said changes of zones to be shown in a revised schedule of rates to be filed with the Commission by the said Company as soon as practicable, as follows:

Pimlico-Pikesville-Emory Grove line:

First fare zone extended to City limits, with rearrangement of other zones.

Hamilton-Carney line:

First fare zone extended to City limits.

Back and Middle River line:

First fare zone extended to City limits, and second fare zone extended to Mace Avenue, in Essex.

Riverview-Dundalk line:

First fare zone extended to terminus of the line, at Dundalk Junction.

Sparrow's Point-Bay Shore line:

First fare zone extended to Dundalk Junction, second fare zone extended to Sparrow's Point and third fare zone extended to terminus of the line.

The use of commutation books on the above mentioned lines shall conform to the new zone limits as herein established.

(5) That during the period this Order is in effect The United Railways and Electric Company of Baltimore shall sell on its cars and at its offices and waiting rooms tickets or fare checks which shall be honored for passage on its cars, at the rate of seven and one-half cents each, which said tickets or fare checks shall be sold on the cars in quantiies of two or more, in the option of the company) and should the conductor of a car at any time be unable for any reason to sell a passenger desiring to purchase them at least two tickets or fare checks, then such passenger shall be required to pay but seven cents fare.

(6) That except as hereinbefore changed, the present rates, fares and charges of The United Railways and Electric Company of Baltimore be and they are hereby continued in effect for the period of this Order.

(7) That the proceeding heretofore instituted by the Commission, known as Case No. 533, in the matter of the valuation of the properties and the investigation of the capitalization and of the affairs of The United Railways and Electric Company of Baltimore, be prosecuted to a conclusion.

(8) That the United Railways and Electric Company of Baltimore shall establish or cause to be established by agencies acceptable to this Commission bus service between the northern and southern sections of the city east of Patterson Park, the date at which said service shall

begin and the terms and conditions under which it shall be furnished to be subject to the approval of the Commission.

(9) That this Order shall be effective from and after midnight of May 31st, 1924, and until midnight of April 30th, 1925, and for no longer, unless such period be extended for a further period, or this Order be earlier modified or abrogated by further order of the Commission, provided that if there shall be pending before the Commission on April 30th, 1925, the valuation proceedings mentioned in the preceding paragraph of this Order, or any other proceedings concerning the rates of fare of The United Railways and Electric Company of Baltimore, this Order and the rates of fare herein provided shall continue in full force and effect until the determination by the Commission of the said pending proceedings.

(10) That The United Railways and Electric Company of Baltimore shall furnish to this Commission accurate and complete statements under oath, and in convenient form, setting forth the number of revenue and transfer passengers carried, and the number of car-miles operated, the cash receipts from operation and other sources, and the operating and other expenditures of the Company, all set forth in the manner prescribed by the rules of this Commission for accounting by street railway companies, so soon as may be reasonably practicable and convenient after the end of each calendar month during the period this Order remains effective, and in no event later than the last day of the next succeeding calendar month, covering the operations of the Company during the next preceding month.

(11) That the right of The United Railways and Electric Company of Baltimore to charge and collect the fares in this order prescribed shall be held subject at all times during the period covered by such order, or any extension thereof which may hereafter be granted as aforesaid, to the right and power of this Commission to reopen this case in the light of the facts disclosed by the monthly reports aforesaid, or of other facts otherwise coming to the attention of this Commission, and modify the rates of

fare by this order authorized to be charged and collected by the Company.

And It Is FURTHER ORDERED: That a copy of this order be forthwith served upon the proper officers of The United Railways and Electric Company of Baltimore, and that said Company, within ten days from the date of the service of such copy, advise this Commission in writing whether or not it will accept and abide by the same.

EZRA B. WHITMAN,

HAROLD E. WEST,

Commissioners.

(F)

CASE NO. 533, OPINION FILED MARCH 9, 1926, AND ORDER NO. 10072.

OPINION

Before the Public Service Commission of Maryland.

Case No. 533.

In the Matter of the Valuation of the Properties and the Investigation of the Capitalization and Affairs of the United Railways and Electric Company of Baltimore, on the Motion of the Commission, under Authority Conferred by Section 30 of the Public Service Commission Law.

Appearances:

Clarence W. Miles, People's Counsel.

E. J. D. Cross, for Mayor and City Council of Baltimore.

Linwood L. Clark, for People's Corporation.

Edwin G. Baetjer, Joseph C. France and William H. Maltbie, for The United Railways and Electric Company of Baltimore.

By the Commission. Filed March 9th, 1926.

This proceeding was instituted by Order No. 1024 of the Commission entered on December 30th, 1912, by which order the Commission directed its Chief Engineer to report as to the cost of making a valuation of the property of The United Railways and Electric Company of Baltimore, hereinafter referred to as the "Railways Company," and as to the time necessary for such valuation.

Reports were filed from time to time by the then Chief Engineer, the late Charles E. Phelps, Jr., and by the then Assistant General Counsel, the late Osborne I. Yellott, and various orders were entered by the Commission requiring the furnishing of certain information by the Railways Company.

Much of the engineering work incident to the valuation was completed, but due to other more immediate and pressing problems before the Commission, the case was not pressed to a conclusion before the World War started. The economic upheaval which came with and continued after the World War taxed the staff and resources of the Commission to the fullest extent, with the result that the present case was permitted to lie dormant.

In the meantime, the base rate of fare of the Railways Company had been increased to meet the higher costs of operation from five cents to six cents on October 1st, 1918, to six and one-half cents on October 1st, 1919, to seven cents on January 1st, 1920, and finally to seven and one-half cents on June 1st, 1924. In addition to the higher costs of operation which went to absorb the increased revenues resulting from the successively increased rates of fare, the Commission from time to time extended the fare zones on the suburban lines of the Railways Company until finally, by its Order No. 8240 entered in Case No. 1682 on May 26th, 1924, it extended the city fare to the city limits as established by the Annexation of 1918 on all lines where it had not theretofore been extended to the city line and made other zone extensions on the county lines, and also provided for the sale of school tickets at the rate of fare of five cents per trip. All these changes reduced materially the revenue which the Railways Company otherwise would have obtained from the higher rate of fare.

In its Order No. 8240 the Commission ordered that:

> "The proceeding heretofore instituted by the Commission known as Case No. 533, in the matter of the valuation of the properties and the investigation of the capitalization and of the affairs of The United Railways and Electric Company of Baltimore be prosecuted to a conclusion."

The said Order further provided:

> "That this Order shall be effective from and after midnight of May 31st, 1924, and until midnight of April 30th, 1925, and for no longer, unless such period be extended for a further period, or this Order be earlier modified or abrogated by further order of the Commission, provided that if there shall be pending before the Commission on April 30th, 1925, the valuation proceeding mentioned in the preceding paragraph of this Order, or any other proceeding concerning the rates of fare of The United Railways and Electric Company of Baltimore, this Order and the rates of fare herein provided shall continue in full force and effect until the determination by the Commission of the said pending proceedings."

Following the entry of Order No. 8240 the Commission undertook the work of making a valuation of the property of the Railways Company, but other matters intervened to delay the work of the engineering and accounting departments of the Commission preliminary to the actual starting of the hearings, with the result that hearings did not start until May 4th, 1925. The hearings consumed in all thirty-one days, in addition to which three days were devoted to oral argument of counsel.

The Commission's engineering staff, under the direction of its chief engineer, H. Carl Wolf, with the assistance of its valuation engineer, W. F. Strouse, was augmented by a small group of temporarily employed engineers and proceeded with the making of an estimate of the cost of reproduction and with a determination of the historical cost of the railway company's property. In coliaboration with the company's engineers, a complete inventory of the property owned and operated by the company as of January 1, 1924, was prepared and carefully checked. Independent cost estimates were undertaken by the Commisson's staff.

People's Counsel Clarence W. Miles assumed office on January 1st, 1925, and immediately began preparation of the people's side of the case. At his request the Com-

mission retained Robert M. Feustel, a consulting engneer of Fort Wayne, Indiana, who has appeared before this Commission in other cases, to assist him. The entire engineering and accounting staff of the Commssion was placed at the disposal of Mr. Miles and co-operated to the fullest extent with Mr. Feustel and his assistant, Walter L. Black.

People's Counsel elected to check cost estimates prepared by the company rather than to prepare independent estimates. He accepted a large part of the physical costs claimed by the company and presented testimony in defense of eliminations made by him from others and of separate computations for a number of items independently computed, particularly overheads. There were therefore presented in evidence the company's estimate and that prepared by Mr. Feustel and Mr. Black, with the assistance of the Commission's staff. An independent appraisal of cost to reproduce new was prepared under Mr. Wolf's direction, but was not placed in evidence.

The Commission, after a careful analysis and full consideration of all the testimony submitted in the case, after a thorough study of the briefs of counsel, and after giving due weight to the various elements which must be considered in determining the fair value of a property such as that of the United Railways and Electric Company as laid down by the United States Supreme Court in the case of Smyth versus Ames, finds the fair value of the property of the Railways Company as of January 1, 1924, to be $77,000,000.

We find the physical property, overheads, working capital and going value, to have a value of $70,000,000, and easements $7,000,000, making the total of $77,000,000.

This is to be compared with the claim of $106,641,360 made by the Company, which includes easements, and $60,577,150 conceded by the People's Counsel, which does not include any allowance for easements.

In arriving at the foregoing figures the Commission has considered the cost to reproduce the property new, the amount of depreciation existing in the property, or

its per cent condition as of January 1, 1924, original cost so far as that could be determined, and the par and market value of securities outstandng against the property as it believes it is required, under the law, to do.

Nevertheless, in arriving at its finding of fair value it has been compelled to depend mainly upon the figures having to do with cost of reproduction.

The Commission took up, item by item, the valuation of the various component parts of the physical property of the Railways Company and carefully studied each item in the light of the evidence submitted in the testimony and the summarized values as given in the briefs of counsel; and also made a careful study with the members of the engineering force of the Commission of the relative merits of the testimony for each item of value, and after such a study arrived at what the Commission considered to be the fair value of each item entering into the physical property, overheads and intangibles.

In the consideration of the value placed upon each item there were differences of opinion among the members of the Commission regarding some of the items, but we have been able to reconcile these differences and agree upon what all the members of the Commission could consider a fair value for each item in question. This agreement among the members of the Commisson covered every item of the physical property, overheads and intangibles with the single exception of easements, Commissioner Harper disagreeing on this item. The other members of the Commission felt that in view of the ruling of Senator William Cabell Bruce, then General Counsel of the Commission, in the Consolidated Gas case of 1913, and the action of the Commission at that time in allowing a value for easements, substantially bound this Commission to an allowance of easements in the present case. However, as 13 years had passed since that opinion was rendered and that action taken by the Commission and as there have been a number of Supreme Court decisions in which the question was involved, it was thought wise to ask the Attorney General who is now the legal adviser of the Commission, for his opinion as to whether a value for easements should be allowed.

Under date of February 11, he advised the Commission that under the Maryland law he did not see how the Commission could avoid including the value of the easements, and the majority of the Commission accepted his view of the situation, as it was prepared to accept it had he ruled otherwise.

Both the People's Counsel and the counsel for the Railways Company, in preparing their valuation figures, followed the account numbers of the Uniform System of Accounts of the Public Service Commission, and placed their value on the items as described under the different account numbers. In the following paragraphs are given the estimates of the cost of reproduction of these items as determined by the People's Counsel and the Railways Company and the Commission's finding for each item.

502—RIGHT OF WAY

People's Counsel's appraisal.....$167,576
Railways' appraisal.....$745,719

The People's Counsel arrived at his figure by appraising the rights of way on the basis of the acreage value of adjoining property. The Railways Company arrived at its value by considering the value of adjoining property. If this was subdivided into lots this value was based upon the square foot value of lots of 150 foot in depth. Where the property was not subdivided, acreage figures as a basis of valuation were taken. After reaching this value the Railway then multiplied the figures thus reached by three, claiming that the cost of procuring a narrow strip in front of the property would be three times as great as the contiguous property itself. The People's Counsel's figure not only included the rights of way in the County, but also the rights of way privately owned in the new Annex, which latter properties are included in the company's claim for easements. After giving careful consideration to all the evidence presented in connection with this item, the Commission agreed upon the value of the property as determined by the Railways, but without the multiplier as the fair value of the rights of way. The Commission does not believe that the rights of way are three times as valuable as

the adjoining property. It recognizes that the company would probably be held up in some cases in trying to secure these rights of way, but it also recognizes the fact that many property owners would donate the rights of way for the advantage of securing a car line in front of their property. The fair value of the right of way outside the city limits are therefore determined by the Commission to be $248,573

503—OTHER LAND USED IN ELECTRIC RAILWAY OPERATIONS

People's Counsel's appraisal..$1,336,380
Railways' appraisal $1,850,662

After consideration of the testimony as to the value of the various parcels of land entering into this item, the Commission arrived at an appraisal, of all the parcels at a figure of $1,748,417

504—GRADING

People's Counsel's appraisal..$1,836,582
Railway's appraisal $2,239,931

The People's Counsel in arriving at his appraisal of this item made no allowance for contractor's profits or overheads. The Commission believes that this part of the work would be done by a contractor, the testimony being to the effect that practically all such work for the company has been done by a contractor over a long period of years. The Commission, however, believes that in some instances the percentage of profit allowed by the company has been too high, and has arrived at a reproduction figure of the grading of..... $2,210,453

505—BALLAST

People's Counsel's appraisal..$1,752,803
Railways appraisal $2,093,940

In this item the People's Counsel again deducted all of the contractor's profits and overheads. The Commission has allowed field overheads, including the cost of superintendence and other expenses, but no contractor's profit, and arrived at a cost of reproduction for this item of $1,967,588

506—TIES

People's Counsel's appraisal..$1,292,828
Railways' appraisal $1,537,461

In arriving at the reproduction cost of this item, the Commission gave practically the same considerations as were described for the item 505, and arrived at a reproduction cost of $1,435,507

507—RAILS, RAIL FASTENINGS AND JOINTS

People's Counsel's appraisal..$3,422,424
Railways' appraisal $4,050,495

The Commission by the same reasoning as was applied to item 505 arrived at a reproduction cost of this item of $3,849,014

508—SPECIAL WORK

People's Counsel's appraisal..$2,514,331
Railway's appraisal $2,993,016

The Commission by the same reasoning as was applied to item 505 arrived at a reproduction cost of this item of $2,814,396

510—TRACK AND ROADWAY LABOR

People's Counsel's appraisal..$3,663,490
Railways' appraisal $4,825,215

The People's Counsel's claim was based largely on Philadelphia costs as testified to by Messrs. Feustel and Black. These figures have no allowance for general contractor's profit or engineering. In arriving at its figure the Commission considered the weight of testimony on this item and allowed for a general contractor, but reduced the contractor's profit, and finally determined upon the reproduction cost for this item of.....$4,583,955

511—PAVING

People's Counsel's appraisal..$2,765,465
Railways' appraisal $3,297,811

The same reasoning was applied to this item as to the 510, and the Commission arrived at a reproduction cost of $3,165,038

512—ROADWAY MACHINERY AND TOOLS

People's Counsel's appraisal....$119,842
Railways' appraisal $119,842

There being agreement on this figure, the Commission accepted the figure of $119,842

515—BRIDGES, TRESTLES AND CULVERTS

People's Counsel's appraisal...$1,307,327
Railways' appraisal $1,281,419

While the People's Counsel's figure is higher than the company's claim, there is an item which we have included in item 511 for paving and, after making this deduction, the company and the People's Counsel are in substantial agreement, so the Commission accepts the figure of $1,281,419

516—CROSSINGS, FENCES AND SIGNS

People's Counsel's appraisal.....$88,983
Railways' appraisal $97,904

The Commission to agree with the appraisal of the People's Counsel as to reproduction cost of this item of $88,983

517—SIGNALS AND INTERLOCKING APPARATUS

People's Counsel's appraisal.....$137,579
Railways' appraisal $153,583

The Commission felt that the People's Counsel's claim should be increased by certain field charges. Therefore, the reproduction cost arrived at by the Commission is $145,897

518—TELEPHONE AND TELEGRAPH LINES

People's Counsel's appraisal.....$289
Railways' appraisal $305

By adding certain field expenses the Commission arrived at the same figure as the company.....$305

519—POLES AND FIXTURES

People's Counsel's appraisal...$1,138,441
Railways' appraisal $1,338,820

After carefully considering the testimony in regard to this item, the Commission believes that this work would be done by the company's own force, and further believes that the People's Counsel's figure should be increased to take care of the company's field costs. The Commission's reproduction cost of this item is $1,195,363

520—UNDERGROUND CONDUITS

People's Counsel's appraisal.... $189,464
Railways' appraisal $219,723

The Commission believes that this work would be done by a contractor and that the reproduction costs would be that given by the company..... $219,723

521—DISTRIBUTION SYSTEM

People's Counsel's appraisal.. $3,256,822
Railways' appraisal $3,852,902

The same reasoning was applied to this item as to item 519, and the Commission arrived at a reproduction cost of $3,549,645

523—SHOPS AND CARHOUSES

People's Counsel's appraisal.. $4,207,565
Railways' appraisal $4,441,435

After a consideration of all the testimony in regard to this item, the Commission agreed upon the figure for its reproduction cost of $4,350,000

524—STATIONS, MISCELLANEOUS BUILDINGS AND STRUCTURES

People's Counsel's appraisal.... $318,324
Railways' appraisal $340,799

After consideration of all the testimony in regard to this item, the Commission agreed upon the figure for its reproduction cost of $335,598

526—PARK AND RESORT PROPERTY

People's Counsel's appraisal.. $489,272
Railway's appraisal..... $608,574

After consideration of all the testimony in regard to this item, the Commission agreed upon the figure for its reproduction cost of.....$510,877

529—OTHER EXPENDITURES—WAY AND STRUCTURES

People's Counsel appraisal.....$45,676
Railways' appraisal $45,676

The Commission accepts the reproduction cost of.$45,676

530—PASSENGER AND COMBINATION CARS

People's Counsel appraisal..$10,527,765
Railways' appraisal $12,009,033

The People's Counsel arrived at his cost of reproduction by applying to the original cost of each of the 1,367 used and useful cars a multiplying factor based on the trend of costs given to the trade by the J. G. Brill Company for the period from 1914 to 1924, and on information secured by Mr. Feustel from the Brill Company on the trend of prices to that date to the trended cost so secured he added 1 per cent for omissions and contingencies. Neither the People's Counsel nor the company's estimates include any allowance for several hundred cars of antiquated design still retained by the company, but not used and having no prospect of being used. The company did include the cost of $110 open car bodies which at the date of valuation were being rebuilt into permanently coupled units. The cost trend referred to did not include shop overhead costs of the cars. The company's estimate was based upon the figures furnished by the J. G. Brill Company as to the reproduction cost of these cars, including shop overheads and 15 per cent profit. After careful consideration of all the testimony in regard to the value of the used and useful cars, and excluding several hundred obsolete cars, the Commission accepted the cost figures presented by the Brill Company with the exception that it made a reduction of the profits from 15 to 10 per cent, which brought its reproduction cost to the figure of $11,486,901

531—FREIGHT, EXPRESS AND MAIL CARS

People's Counsel's appraisal...$39,322
Railways' appraisal $52,094

The same reasoning was applied to these cars as to those in the preceding item, and the Commission arrived at the reproduction cost of.....$49,829

532—SERVICE EQUIPMENT

People's Counsel's appraisal..$477,729
Railways' appraisal.....$454,148

The company's claim omitted an item of $55,236, included in its testimony, and after adding this to its claim the Commission arrived at its reproduction in the same way as in the two preceding items. This reproduction cost agreed upon by the Commission is.....$487,237

533—ELECTRIC EQUIPMENT OF CARS

People's Counsel's appraisal.$5,747,935
Railways' appraisal.....$6,087,930

The People's Counsel's figure was again based on trended prices, and after considering the definite figures furnished by the manufacturers of this equipment, the Commission accepted the reproduction cost of.....$6,087,930

536—SHOP EQUIPMENT

People's Counsel's appraisal...$350,595
Railways' appraisal.....$350,595

The Commission accepted this agreed upon figure of $350,595

537—FURNITURE

People's Counsel's appraisal..$270,720
Railways' appraisal.....$270,720

The Commission accepted this agreed upon figure of $270,720

538—MISCELLANEOUS EQUIPMENT

People's Counsel's appraisal..$153,012
Railways' appraisal.....$153,012

The Commission accepted this agreed upon figure of $153,012

539—POWER PLANT BUILDINGS

People's Counsel's appraisal...$43,325
Railways' appraisal $46,095

After a consideration of all the evidence, the Commission arrived at a reproduction cost of this item of....$45,500

540—SUBSTATION BUILDINGS

People's Counsel's appraisal..$448,061
Railways' appraisal.....$478,810

After a careful consideration of all the testimony regarding this item, the Commission arrived at a reproduction cost of $473,822

542—POWER PLANT EQUIPMENT

People's Counsel's appraisal..$169,972
Railways' appraisal.....$169,972

The Commission accepted this agreed upon figure of $169,972

543—SUBSTATION EQUIPMENT

People's Counsel's appraisal.$1,837,859
Railways' appraisal.....$1,837,859

The Commission accepted this agreed upon figure of $1,837,859

544—TRANSMISSION SYSTEM

People's Counsel's appraisal...$642,083
Railways' appraisal.....$759,898

After adding certain field costs to the People's Counsel's figures, the Commission agreed upon the reproduction cost for this item of.....$718,046

501—ENGINEERING AND SUPERINTENDENCE

People's Counsel's appraisal.$3,299,975
Railways' estimate.....$2,940,229

The People's Counsel's estimate for engineering and superintendence is arrived at by taking 6½ per cent of accounts 502 to 544, inclusive. This figure included certain field overheads as well as engineering.

The Company's figure is based on 5 per cent of its appraisal of the property in accounts 502 to 544, inclusive, which appraisal included contractor's profit and overheads.

The Commission's figure is based on 5 per cent of the same accounts. Its allowance for field and contractor's profits where applicable, overheads and superintendence, was included in the various accounts.

In a number of items previously listed the People's Counsel's figures did not include field overheads, and for this reason his percentage on engineering was increased to 6½ per cent. In the Commission's figures there were included in these several items the field costs, so the Commission's figures on the items in question were higher than the People's Counsel's for this reason. The Commission has agreed upon 5 per cent of items 502 to 544, inclusive, and arrives at a figure of.....$2,799,884

546—LAW EXPENDITURES

People's Counsel's estimate...$253,799

The company did not make any separate claim for legal expenses, but made a claim for administrative and legal expenses combined, amounting to $1,176,092, which is practically 2 per cent of items covering the total of physical property.

The Commission has made an allowance for legal expenses amounting to 1 per cent of the items of the physical property, or.....$559,977

549—TAXES

People's Counsel's estimate...$462,229
Railways' estimate.....$462,229

This is the actual amount of property taxes paid by the company in 1924. The Commission accepts this agreed upon estimate of.....$462,229

550—MISCELLANEOUS

Under this item, the company included Insurance, Organization Prior to Construction and Legal and Administrative Expenses.

People's Counsel included Organization Prior to Construction and Administration During Construction, but made no allowance for Insurance.

If it is considered that of the 2 per cent claimed by

the company for Legal and Administrative Expenses, one-half of one per cent is for Legal Expenditures, the other 1½ per cent would be for Administrative During Construction.

In the People's Counsel's estimate, there was included under Miscellaneous an item of 5 per cent, and for purposes of comparison we have divided this so that 2 per cent is for Organization Prior to Construction and 3 per cent for Administration During Construction.

The following are the elements of the various items:
Organization Prior to Construction

People's Counsel's estimate.$1,015,697
Railways' estimate.....$1,764,138

The company's figure is 3 per cent of the total physical property, while the People's Counsel's figure is 2 per cent of the total physical property.
Administration During Construction

People's Counsel estimated $1,523,643, the company estimated $882,069. The People's Counsel's estimate is based on 3 per cent of the total value of the physical property, while the company's claim is for 1½ per cent of the total value of the physical property. This difference is brought about by the fact that the company, in claiming a general contractor would be employed, figures that the cost of Administration During Construction would be less, with a general contractor, than if one was not employed.
Insurance

The company estimated $62,694. This is the actual insurance paid by the company during the year 1923.

People's Counsel made no allowance for Insurance, as he claimed that all necessary allowances were made in the base cost.

The total claims for both the company and the People's Counsel for this Miscellaneous item are as follows:

People's Counsel's estimate.$2,539,240
Railways' estimate.....$2,708,901

The Commission has included all the above items and in

addition, as provided for in the classification of accounts, has included such expenses and cost of financing as would be incurred by the company as explained below in the discussion of Costs of Financing, no separate allowance has been made elsewhere for this item. The Commission arrived at a figure for this Miscellaneous account of $3,589,186

547—INTEREST DURING CONSTRUCTION

People's Counsel's estimate..$4,587,296
Railways' estimate.....$7,393,097

The People's Counsel's estimate is based on 8 per cent of the cost of accounts 501 to 546, inclusive, and 549 and 550, this being a compromise figure testified to by the witness Feustel, with no definite reference to the length of the construction period assumed.

The company's claim is based on 11 per cent of the cost of accounts 501 to 546, inclusive, and accounts 549 and 550. The company assumed a four-year construction period and that all the money would be borrowed in advance at 7 per cent, that 3 per cent interest would be allowed on bank balances and that the property would begin to earn at the end of two years, thus giving one-half (of 28 per cent less 6 per cent), which equals 11 per cent.

After consideration of the testimony, the Commission adopted a percentage of 8, which, applied to accounts 501 to 546 inclusive, and accounts 549 and 550, gives an allowance for this item of.....$5,072,717

WORKING CAPITAL

People's Counsel claimed $1,400,000 and the company claimed $2,000,000. Both included approximately $1,000,000 as the cost of necessary materials and supplies on hand. People's Counsel based his claim on the excess of liquid assets over liquid liabilities, and allowed approximately $400,000 for cash working capital, while the company maintained that at least $1,000,000 was necessary to provide for bills falling due and to maintain proper bank balances.

The Commission allowed the agreed estimate for materials and supplies of $1,000,000 and in addition it allowed

approximately two weeks' operating expenses, amounting to $500,000, giving a total allowance for Working Capital of $1,500,000

COST OF FINANCING

People's Counsel estimated $3,166,425 for this item, being 5 per cent of the estimated cost of reproduction of the property in accounts 501 to 550, inclusive, plus Working Capital.

The company claimed $4,476,184, being 6 per cent of the same items included by People's Counsel.

The amount to be allowed for the Cost of Financing in valuation proceedings is one of the unsettled elements in such proceedings. In a number of cases, amounts similar to those estimated by the company and People's Counsel have been allowed. This amount is supposed to cover the cost to the company of selling its securities and includes what is commonly called the "bankers' spread" or the difference between the amount of money received by the company and the price at which the securities are sold to the public. In some cases it has not only been made to cover the difference in cost as described above, but the difference between the amount received by the company and the par value of the securities. On the other hand, it is claimed in some cases that the only cost of financing which should be included is the actual cost incurred by the company itself and not by the bankers in floating the securities. It was agreed to put in account 550, Miscellaneous, an increased amount to cover the cost of financing and this explains why the amount allowed under account 550 is greater than that estimated by either the company or the People's Counsel. The Commission therefore makes no specific allowance for cost of financing.

DEPRECIATION

After arriving at its figures for the reproduction cost new of the property, the Commission took up the question of depreciation, and present per cent condition of the property; handling this, item by item, as it handled the items of the reproduction cost. The figures reached by the Commission for the per cent condition of the property are shown in the table which is embodied in this

opinion. It is not necessary to take up each item in detail and give the reasons for the conclusions reached. All that is necessary is to say that the Commission weighed very carefully all the elements which affect the various features of the property. The per cent condition of the completed property, as claimed by the Railways, was 91.7 per cent. The condition claimed by the People's Counsel was 81.3 per cent. The condition found by the Commission is 88 per cent. These are all based on the total cost of reproduction new, including Working Capital.

There are many theories as to how depreciation should be figured on any property. The extreme advocates on one side claim that as long as the property is kept in 100 per cent operating condition there should be no depreciation charged against the property, and that worn out and obsolete property should be paid for out of current maintenence. This theory makes no provision for any large retirements and if any large amount of property is taken out of use, due to obsolence or other causes, there is no fund provided for taking care of such a retirement. The advocates of this method, however, maintain that a suspense account, for such large retirements, should be taken care of over a period of years in the future, rather than accumulating a fund which can be spent at the time the retirement takes place.

On the other hand, the opposite extreme is the theory that every item going into a property should be given a definite life and that each year there should be credited to a depreciation reserve an amount proportional to the length of life of the property involved. This latter theory leads to a number of absurdities in that the life, for instance, of buildings varies so markedly that at the end of the assumed life of a particular building it may still be in existence and performing its functions just as well as it did when it was new.

Between these two theories there is what is called the "Observed Depreciation," which is the placing of a per cent condition on property as a result of an observation and inspection of all its definite parts. The difficulty with such a method is that it does not take into account retirements for obsolence. Many elements of a Street Railway may be practically in 100 per cent operating condi-

tion one year and be retired the next because of obsolence, as for instance the abandonment of the cable system while in perfect operating condition for the cheaper and more economically operated trolley system, which we have today.

GOING VALUE

People's Counsel's estimate. $6,506,881
Railways' estimate.....$16,000,000

The People's Counsel based his estimate upon the testimony of Mr. Feustel, who frankly stated that Going Value was something that was almost impossible to figure, and in his opinion, in the case of the United Railways, it was 10 per cent of the reproduction of the physical property, plus overheads.

The company, in an elaborate statement, attempted to analyze the different elements which enter into Going Value and to place a money value on these various elements. Among these elements were: trained personnel, accumulated records, operating income, realignment, supercession of property and development of traffic, particularly in the suburban territories.

The Commission concedes that substantially all of these are elements of Going Value, but when one endeavors to come to place a definite money value on each he is lead into realms of fancy from which it is difficult to get back to the substantial facts of the situation. Many regulatory bodies have adopted as a proper allowance for going value a percentage of the value of the property. This being a matter for the judgment of the Commission, it does not undertake to put a value on the various elements mentioned by counsel for the company, but adopts the figure of 12½ per cent of the physical property and overheads, but not including working capital, as fairly representing the Going Value of the Railways Company.

This going value varies with every company that comes before the Commission, according to the peculiar facts in connection with the development of that company's business. In the case of the United Railways and Electric Company, it is well known that the company itself, in going into undeveloped sections in the past has

done so at a loss until the territory has developed. The territory served would not have developed if the railway had not first been built. In the evolution of modern transportation there have also been tremendous costs incurred by the companies in abandoning obsolete property because of newer developments. The costs that were incurred could not be called imprudent because at the time they were incurred they were for the best and most up-to-date methods known to urban transportation experts.

The 12½ per cent which the Commission allow amounts to $8,560,210.

The Supreme Court has said that "in order to ascertain the value it is necessary to consider the original cost of construction and the amount expended in permanent improvements, the amount and market value of bonds and stock, the present as compared with the original cost of construction and the probable earning capacity of the property under particular rates prescribed by the statute. * * * We do not say that there may not be other matters to be regarded in estimating the value of the property." (Smyth versus Ames, Supra.)

VALUE OF SECURITIES

On January 1st, 1924, the par value of the outstanding securities of the United Railways and Electric Company was as follows:

Stock	$20,461,200
Bonds—	
Income	$14,000,000
Mortgage	51,366,000
Total of Bonds	$65,366,000
Total par value of all securities	$85,827,200

At the same time the market value of these securities, as indicated by stock market quotations was as follows:

Stock	$6,956,808
Bonds—	
Income	$7,210,000
Mortgage	42,463,010
Market value of bonds.....	$49,673,010
Total market value of securities.....	$56,629,818

ORIGINAL COST

The company claimed that the original cost of the property at the time of the consolidation in 1899 was at least $42,621,455. The cost of the net additions since that time have been $25,537,453. The company, therefore, claimed as of January 1st, 1924, that the original cost of the property was at least $68,158,908. People's Counsel claimed that the original cost at the time of the consolidation was $32,000,000, and, adding the $25,000,000 in additions, that the original cost of the property as of January 1st, 1924, was.....$57,000,000

It is impossible for the Commission to ascertain what is usually known as the original cost of the property. Such records as to the original cost as the company had were destroyed in the fire of 1904 and the company has in its possession only the record of what was paid for the property. The figure above given by the company does not represent either the par or the market value of the securities issued by the company at that time, as the par value of the securities was $60,366,000, with a market value of.....$52,844,713

The company claimed as original investment not the market value of the securities issued to the syndicate, which effected and financed the consolidation, but the cash price paid by the syndicate for the stocks of the Baltimore City Passenger and the Baltimore Consolidated Railways, plus the par value of the underlying

bonds, and has considered the market value of the new securities issued only in the case of the relatively small amount of the United Railways common stock issued in exchange for the common stock of the Baltimore and Northern Railway. It has made no claim for the common stock issued as a part of promoter's fee in exchange for which the controlling interest of the Baltimore, Middle River and the Sparrow's Point Railway was transferred to the new company. In other words, the Railways Company has taken as the cost of the property to the syndicate and as the original investment in the property, $44,076,000, or over $8,000,000 less than the par value of the securities, and from this figure it has deducted the investment securities transferred by the underlying companies to the new company to the sum of $1,454,545.50, leaving a net original cost claimed by the company of $42,621,454.50 at the time of the consolidation in 1899.

The $25,537,453 represents the net additions to the property since the consolidation in 1899.

The People's Counsel arrived at his original cost of $32,000,000 by using the actual stock exchange quotations on the stock of the constituent companies, plus their estimated indebtedness, which gave a value of the property of $32,866,000, one year prior to the announcement of the plans for consolidation. He also produced an exhibit tending to show that the actual value of the physical property as of April 1st, 1899, was $32,127,460, which included superseded property estimated at $4,235,871 for the horse car period, and $4,168,536 for the cable car period, or a total for these two items of approximately $8,400,000, which, if deducted from the $32,000,000 above mentioned would leave less than $24,000,000 actual property upon the books of the company at the date of the consolidation.

ORIGINAL COST EXPRESSED IN THE VALUE OF THE DOLLARS OF TODAY

In the telephone case decided about a year ago, the Federal Court in arriving at the value of the property of The Chesapeake and Potomac Telephone Company of Baltimore City, applied to the original cost an index figure of 1.54, which was the general index figure showing the

purchasing power of the dollar of today as compared with the purchasing power of the dollar of 1914. In other words, it took a dollar and fifty-four cents to purchase in 1925 what one dollar purchased in 1914. Applying this same method to the various original costs given in the preceding paragraph we obtain the following figures:

People's Counsel's Original Cost,

1899	$32,000,000
Index Figure Applied by Federal Court	1.54
Present Value of 1899 Property	$49,280,000
Additions to 1914 (Approx.)	$17,500,000
Index Figure Applied by Federal Court	1.54
Present Value of Additions from 1899 to 1914	$26,950,000
Additions 1914 to 1923 (Approx.)	7,500,000
Total Present Value of Property as of Jan. 1, 1924	$83,730,000

Company's Original Cost, 1899	$42,621,454
Index Figure Applied by Federal Court	1.54
Present Value of 1899 Property	$65,637,000
Additions to 1914 (Approx.)	$17,500,000
Court's Index Figure	1.54
Present Value of Additions 1899 to 1914 (Approx.)	$26,950,000
Additions 1914 to 1923	7,500,000
Total Present Value of Property as of Jan. 1, 1924	$100,087,000

The People's Counsel claimed that the actual value of property as of 1899 should be reduced by $8,000,000 because of superseded horse car and cable property, leaving $24,000,000 as the actual value of the physical property in 1899. Applying the index figure of 1.54 to these figures, we get the following:

People's Counsel's Value of Actual Property	$24,000,000	
Federal Court Index Figure	1.54	
Present Value of 1899 Property		$36,960,000
Additions to 1914 (Approx.)	$17,500,000	
Federal Court Index Figure	1.54	
Present Value of Additions 1899 to 1914		$26,950,000
Additions 1914 to 1923 (Approx.)		7,500,000
Total Present Value of Property as of Jan. 1, 1924		$71,410,000

Making the same deduction for superseded property from the original cost claimed by the company, the following figures are obtained:

Company's Claim less Superseded Property	$34,000,000	
Court Index Figure	1.54	
Present Value of 1899 Property		$52,360,000
Additions 1899 to 1914 (Approx.)	$17,500,000	
Court Index Figure	1.54	
Present Value of Additions 1899 to 1914		$26,950,000
Additions 1914 to 1923 (Approx.)		7,500,000
		$86,810,000

The figures above given might be modified to some extent by applying the index from 1899 to 1914 and by taking account of certain unused property that is not

taken care of in the above figures, but these changes would tend to offset each other. The figures arrived at are merely computed as a guide in reaching the fair value of the property and are, approximately, what would be obtained in applying the Federal Court's method in arriving at the value of the property as of today.

SUMMARY

Summarizing the various elements entering into the determination of the fair value of the property, we have the following:

Cost to Reproduce New, Undepreciated	
Company (including easements)	$113,264,205
Company (excluding easements)	95,079,251
People's Counsel (excluding easements)	72,975,688
Commission's finding (excluding easements)	78,541,895
Cost to Reproduce New, Less Depreciation	
Company (including easements)	106,641,360
Company (excluding easements)	88,456,406
People's Counsel (excluding easements)	60,488,392
Commission's finding (excluding easements)	70,100,645
Securities	
Par Value	85,827,200
Market Value	56,629,818
Original Cost	
Company	68,158,908
People's Counsel	57,000,000
Original Cost in Present Day Dollars	
Company	100,087,000
Company (less superseded property)	86,810,000
People's Counsel	83,730,000
People's Counsel (less superseded property)	71,410,000

We therefore find the fair value of the property of The United Railways and Electric Company of Baltimore, without easements, to be $70,000,000

EASEMENTS

Long and serious study has been given to the problem of easements, and as heretofore stated it was the one issue on which the Commission could not agree. The question as to whether a value should or should not be allowed for easements was raised by People's Counsel as a purely legal issue, he holding that no value for them should be allowed, notwithstanding the Maryland Court of Appeals had held them to constitute an interest in real estate, and taxable as real estate.

Senator William Cabell Bruce, then General Counsel to the Commission, on January 4, 1913, in the Consolidated Gas and Electric Company's valuation case, ruled that a value for easements must be allowed and the Commission in that case allowed the Gas Company a value of $5,000,000 for its easements, this being the amount on which they were taxed. However, as thirteen years had passed since the opinion referred to had been given, and the allowance made, and as numerous Federal Court decisions on the general subject of franchises had been given, the majority of the present Commission felt it to be its duty to refer the question again to its legal adviser, who is now the Attorney General of the State. In his opinion, given under date of February 11, 1926, he states that he has carefully examined the authorities bearing upon the question, that it is settled law in this State that the easements owned by the United Railways Company are property, and are subject to taxation under the tax laws of the state; and

> "I am unable to see how the Commission can avoid including the value of the easements owned by the United Railways and Electric Company in the streets of this city in determining the value of its property for rate making purposes."

Therefore, acting upon this opinion an allowance is made for easements.

For this element of the company's property it claimed a value of $18,184,954, made up as follows:

Easements in Baltimore City	$17,816,292
Easements in the Counties	85,204
Turnpike rights of way in Counties	283,458
Total	$18,184,954

COMPANY'S BASIS FOR ARRIVING AT EASEMENT VALUES

For its easements in the new annex the company bases its value on their valuation for taxation purposes. On such mileage in this territory, not subject to the 9 per cent park tax, these easements are taxed on a valuation of $12,500 per single track mile, or a total value for the easements in the new annex of.....$1,131,512

For easements in the old annex it also accepts the value fixed by the public authorities for taxation purposes of $17,692 per single track mile, or a total of.....$1,140,143

In arriving at what it claims to be the value of its easements in the old city, the company suggested three methods. The first of these was to determine the relative value of an annex easement, as compared with the value of abutting land and apply the same ratio to the old city easements. By this method it reached a value of easements in the old city and old annex of.....$15,887,243

The second method was to give the old city easements a value per mile which bears the same ratio to the value per mile of the old annex easements as the density of population in the old city bears to the density of population in the old annex. This method gave a value of $93,414 per single track mile as the average throughout the old city, or a total for the old city of $16,030,922, or for the old city and old annex of.....$17,171,065

The third method suggested was a comparison of the railway easements with those of the Gas Company. The railways company claims that surface privileges in the streets are held to be worth twice as much as sub-surface privilege, and that as the average space occupied by a single track of the railways is five times the average space occupied by gas mains, the railway easements are worth ten times as much as the Gas Company easements. Also that a row of railway trolley poles with feeder wires, trolley wires and one-half the span wire system would be equal to a single pole line of the Gas Company of equal length. On the basis of this comparison it gets a total value for railway and pole line easements of $72,000 per mile. Applying this figure to the railway mileage in the old city and old annex, it arrives at an easement value in this territory of.....$16,996,032

Averaging the three values thus found for the old city and old annex together, the sum reached by the company is $16,584,780, or a total for all the easements within the city of Baltimore of $17,816,292, which is the company's claim.

Singularly enough this equals the capitalization of the park tax paid by the company for 1923, at approximately 6½ per cent.

COMMISSION'S BASIS FOR VALUING EASEMENTS

The Commission cannot accept any of these methods of arriving at the value of the company's easements. If these easements were owned in fee simple and the company had the exclusive use of them it would hesitate to apply any such method or methods in determining their value. As it is, the company has only *an interest* in that part of the public highways occupied by its tracks, and not an outright ownership, and it can only use that part of the highways occupied by its tracks, in common with other vehicles operating over the highways. Therefore the method used in arriving at the fair value of the private rights of way, owned by the company, cannot, the Commission holds, be applied to easements generally.

The Commission feel that a method, fair alike to the people and the company is to be found in the plan adopted by the Commission in 1913 in valuing the easement of the Gas Company. In that case it fixed as the easement value, the value at which the easements were taxed.

While it is true that all of the easements of the Railways Company in Baltimore city have not been covered by the compromise values, established by the Railways Company and the Appeals Tax Court of Baltimore, as a result of the decisions in the Court of Appeals which established easements as an interest in the soil and made them taxable as real estate, a value for taxation purposes was reached for such mileage in the old and new annexes as was not subject to the park tax. Those values, as already stated, were $12,500 per mile for the new annex and $17,692 for the mileage in the old annex.

It is the Commission's belief that the easements in the old city are more valuable than those in the old annex, as those in the old annex are more valuable than those in the new annex. This is indicated by the different values put upon easements in the annexes for purposes of taxation. Therefore, it adopts the figure of $12,500 per mile as the value of easements in the new annex, and $17,692 a mile as the value of the easements in the old annex. Also, it increases the value of the easements in the old annex by substantially the same percentage of increase (about 40 per cent), as is indicated in the value of old annex easements over new annex easements, thereby reaching a figure of $25,000 per mile, which it applies to the easements in Baltimore City as it was prior to the annexation of 1888, and which it believes to be a fair value for them. It also adopts the figures of the company for the value of its easements in the County, or.....$368,662

On this basis, which the Commission believes to be certainly as reasonable, and as no more arbitrary than that adopted by the company, the Commission reaches the following results:

County easements (Company's Claims)	$368,662
New Annex easements (90,521 miles) at $12,500 per mile	1,131,512
Old Annex easements (67,612 miles) at $17,692 per mile	1,196,191
Old City easements (171,558 miles) at $25,000 per mile	4,288,950
Total	$6,985,315

The Commission adopts this method of indicating the value of the company's easements, and finds the value of these easements to be.....$7,000,000

OTHER ISSUES

Three issues which had nothing to do with valuation were brought up at the hearing. One of these involved the rerouting of the street cars of the Railways' system, another involved the removal of the one-man cars from the Halethorpe line, and the other involved the issuing of a weekly pass at a fixed rate, the pass entitling the holder to as many rides he cared to make.

The rerouting problem was referred to a special traffic committee headed by Clarence W. Miles, People's Counsel, as chairman. Its recommendation for street car rerouting will soon be passed on by this Commission after the necessary public hearings shall have been held. The one-man car problem has been considered by this special traffic committee, and it has made recommendations which may solve it.

As to the weekly pass proposition, this Commission feels it would be unwise to require the Railways' Company to embark on such an experiment. Proponents of the weekly pass idea testified that it was "a gamble," that there was no way of checking the results of the pass upon the revenues of those companies in other cities, but their general impression was that it had been helpful.

In view of the testimony submitted, this Commission does not feel justified in requiring the company to issue such a pass or ticket, and it would hesitate to approve such a plan if it were proposed by the company, on the ground that it would be a marked departure from the plan of measured service, under which the patron of a utility pays for what he receives, and toward the plan of unlimited service for a fixed charge or flat rate.

As the period for which the present rate of fare was ordered to remain in force expires with the determination of the present case, and as the rate of fare was not an issue in the valuation proceedings, the Commission will, in its order which accompanies this opinion, require the continuance of the present base rate fare of seven and a half cents when tickets or fare checks are purchased, or eight cents cash; until April 30, 1928, with the provision that if any proceedings involving the rate of fare be pending at the expiration of that period, then the present rate will be continued for an additional period of six months unless such proceedings shall be terminated before the expiration of that time.

An order will be entered in accordance with the conclusions herein.

Public Service Commission of Maryland, Chairman West and Commissioner Whitman.

COMPARISON OF ESTIMATES OF PEOPLE'S COUNSEL AND OF RAILWAYS C
REPRODUCTION, PRESENT CONDITION AND GOING VALUE, B
UNITED RAILWAYS

Account		Cost to Reproduce N	
	PHYSICAL PROPERTY	People's Counsel	Railways
502	Right of Way	$167,576	$745,719
503	Other Land Used in Electric Railway Operations	1,336,380	1,850,662
504	Grading	1,836,582	2,239,931
505	Ballast	1,752,803	2,093,940
506	Ties	1,292,828	1,537,461
507	Rails, Rail Fastenings and Joints	3,422,424	4,050,495
508	Special Work	2,514,331	2,993,016
510	Track and Roadway Labor	3,663,490	4,825,215
511	Paving	2,755,465	3,297,811
512	Roadway Machinery and Tools	119,842	119,842
515	Bridges, Trestles and Culverts	1,307,327	1,281,419
516	Crossings, Fences and Signs	88,983	97,094
517	Signals and Interlocking Apparatus	137,579	153,583
518	Telephone and Telegraph Lines	289	305
519	Poles and Fixtures	1,138,441	1,338,820
520	Underground Conduits	189,464	219,723
521	Distribution System	3,256,822	3,852,902
523	Shops and Carhouses	4,207,565	4,441,435
524	Stations, Miscellaneous Buildings and Structures	318,324	340,799
526	Park and Resort Property	489,272	608,574
529	Other Expeditures— Way and Structures, Trackless Trolley Construction	45,676	45,676
530	Passenger and Combination Cars	10,527,765	12,009,033
531	Freight, Express and Mail Cars	39,322	52,094
532	Service Equipment	477,729	454,148
533	Electric Equipment of Cars	5,747,935	6,087,930
536	Shop Equipment	350,596	350,595
537	Furniture	270,721	270,720
538	Miscellaneous Equipment	153,012	153,012
539	Power Plant Buildings	43,325	46,095
540	Substation Buildings	448,061	478,810
542	Power Plant Equipment	169,972	169,972
543	Substation Equipment	1,837,859	1,837,859
544	Transmission System	642,083	759,898
	Total	$50,759,843	$58,804,588
	OVERHEADS		
501	Engineering and Superintendence	3,299,975	2,940,229
546	Law Expenditures	253,799	1,176,092*
547	Interest During Construction	4,587,296	7,393,097
549	Taxes	462,229	462,229
550	Miscellaneous	2,539,240	1,826,832**
	Cost of Financing	3,166,425	4,476,184
	Total	$14,308,964	$18,274,663
	Total of Physical Property and Overheads	$65,068,807	$77,079,251
	Working Capital	1,400,000	2,000,000
	Total	$66,468,807	$79,079,251
	Going Value	6,506,881	16,000,000
	GRAND TOTAL	$72,975,688	$95,079,251

*Includes Administrative and Legal Expense.

**Includes C

ESTIMATES OF PEOPLE'S COUNSEL AND OF RAILWAYS COMPANY WITH FINDINGS OF PUBLIC SERVICE COMMISSION OF MARYLAND AS TO COST OF ODUCTION, PRESENT CONDITION AND GOING VALUE, BUT WITHOUT EASEMENTS, AS OF DECEMBER 31, 1923, OF THE PROPERTY OF THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE.

Account	Cost to Reproduce New			Per Cent. Condition			Cost to Reproduce New Less Depreciation		
SICAL PROPERTY	People's Counsel	Railways	Commission	People's Counsel	Railways	Commission	People's Counsel	Railways	Commission
.....	$167,576	$745,719	$248,573	100%	100%	100%	$167,576	$745,719	$248,573
in Electric Railway Operations	1,336,380	1,850,662	1,748,417	100	100	100	1,336,380	1,850,662	1,748,417
.....	1,836,582	2,239,931	2,210,453	87.2	100	100	1,600,397	2,239,931	2,210,453
.....	1,752,803	2,093,940	1,967,588	95	84	80	1,665,163	1,758,910	1,574,070
.....	1,292,828	1,537,461	1,435,507	65	84	80	840,338	1,291,467	1,148,406
nings and Joints.....	3,422,424	4,050,495	3,849,014	72	80	80	2,464,145	3,402,415	3,079,211
.....	2,514,331	2,993,016	2,814,396	67	84	80	1,684,602	2,514,133	2,251,516
way Labor.....	3,663,490	4,825,215	4,583,955	65	84	80	2,381,269	4,053,181	3,667,164
.....	2,755,465	3,297,811	3,165,038	80	84	80	2,212,372	2,770,161	2,532,030
ry and Tools.....	119,842	119,842	119,842	70	70	70	83,889	83,889	83,889
and Culverts.....	1,307,327	1,281,419	1,281,419	80	82	82	1,045,862	1,046,474	1,050,764
and Signs.....	88,983	97,094	88,983	87	89	87	77,415	86,601	77,415
locking Apparatus.....	137,579	153,583	145,897	90	98	95	123,821	150,511	138,602
legraph Lines.....	289	305	305	90	90	90	260	274	275
.....	1,138,441	1,338,820	1,195,363	85	91.5	90	967,675	1,225,020	1,075,827
ults	189,464	219,723	219,723	95	96	95	179,991	210,934	208,737
m	3,256,822	3,852,902	3,549,645	88	89	88	2,866,003	3,449,118	3,123,688
es.....	4,207,565	4,441,435	4,350,000	71.3	93	87	2,997,029	4,127,027	3,784,500
eous Buildings and Structures	318,324	340,799	335,598	79.7	90.6	85	253,704	308,452	285,258
Property.....	489,272	608,574	510,877	73.7	90.6	80	360,593	551,190	408,702
s—									
ctures.									
ley Construction	45,676	45,676	45,676	90	90	90	41,108	41,108	41,108
mbination Cars.....	10,527,765	12,009,033	11,486,901	70	90	85	7,369,436	10,824,518	9,763,866
nd Mail Cars.....	39,322	52,094	49,829	50	90	80	19,661	46,885	39,863
.....	477,729	454,148	487,237	55	80	80	262,751	363,318	389,790
t of Cars.....	5,747,935	6,087,930	6,087,930	70	90	85	4,023,554	5,479,137	5,174,741
.....	350,596	350,595	350,595	80	80	80	280,477	280,476	280,476
.....	270,721	270,720	270,720	80	80	80	216,577	216,576	216,576
pment	153,012	153,012	153,012	65	60	60	99,458	92,007	991,807
lings	43,325	46,095	45,500	65	93	85	28,115	42,868	38,675
gs	448,061	478,810	473,822	81	93	85	363,891	445,296	402,749
ment	169,972	169,972	169,972	70	76	70	118,890	127,479	118,980
ent	1,837,859	1,837,859	1,837,859	85	92	90	1,562,180	1,690,830	1,654,073
em	642,083	759,898	718,046	90	90	90	577,875	683,908	646,241
.....	$50,759,843	$58,804,588	$55,997,692	75.3	88.7	85	$38,272,547	$52,181,743	$47,556,442
VERHEADS									
perintendence.....	3,299,975	2,940,229	2,799,884	100	100	100	3,299,975	2,940,229	2,799,884
.....	253,799	1,176,092*	559,977	100	100	100	253,799	1,176,092*	559,977
onstruction.....	4,587,296	7,393,097	5,072,717	100	100	100	4,587,296	7,393,097	5,072,717
.....	462,229	462,229	462,229	100	100	100	462,229	462,229	462,229
.....	2,539,240	1,826,832**	3,589,186	100	100	100	2,539,240	1,826,832**	3,589,186
.....	3,166,425	4,476,184	.....	100	100	...	3,166,425	4,476,184	.....
.....	$14,308,964	$18,274,663	$12,483,993	100	100	100	$14,308,964	$18,274,663	$12,483,993
Property and Overheads.....	$65,068,807	$77,079,251	$68,481,685	80.7	91.4	87.7	$52,581,511	$70,456,406	$60,040,435
.....	1,400,000	2,000,000	1,500,000	100	100	100	1,400,000	2,000,000	1,500,000
.....	$66,468,807	$79,079,251	$69,981,685	81.2	91.6	88	$53,981,511	$72,456,406	$61,540,435
.....	6,506,881	16,000,000	8,560,210	100	100	100	6,506,881	16,000,000	8,560,210
TOTAL	$72,975,688	$95,079,251	$78,541,895	82.9	93	89.2	$60,488,392	$88,456,406	$70,100,645

tive and Legal Expense.

** Includes Organization Prior to Construction—$1,794,132 and Insurance During Construction—$62,694.

DISSENTING OPINION

Before the Public Service Commission of Maryland.

CASE No. 533

In the Matter of the Valuation of the Properties and the Investigation of the Capitalization and Affairs of The United Railways and Electric Company of Baltimore, on the Motion of the Commission Under Authority Conferred by Section 30 of the Public Service Commission Law.

HARPER, Commissioner (dissenting):

In the action of my colleague in allowing a value of $7,000,000 for easements in the valuation of the property of The United Railways and Electric Company of Baltimore I am unable to concur, and I am compelled to dissent from their decision upon that subject. The inclusion of a value for easements in the rate base will have a far-reaching effect upon the valuation of the property of public service corporations in this State and will result in the imposition of a burden upon the rate payers to which I am unwilling to give my assent. In view of the importance of this subject, I feel justified in stating the reasons which lead me to the conclusion that no allowance whatever should be made for easements.

When, during the course of the consideration of the record in this case by the members of the Commission the question of easements was taken up, I took the position that no allowance should be made, that being the conclusion I had definitely reached, and in support of that position I submitted to my colleagues a memorandum of my reasons and of the authorities relied upon to sustain my contention that no value for easements should be included in the rate base. They then proposed that the advice of the Attorney General of Maryland on this point should be sought. This I opposed, for the reason that in

my opinion the question as to what, if any, allowance should be made for easement is one for determination and decision by the Commission, just as the many other important issues in the case, involving legal, engineering and accounting questions, must be decided by it. My colleagues, however, decided to request the advice of the Attorney General, and a letter was addressed to him asking him if, in his opinion, the Commission should include in the valuation of the property of The United Railways and Electric Company of Baltimore any allowance for the easements of the company in the public highways. On February 11, 1926, Attorney General Robinson advised the Commission that he was unable to see how the Commission could avoid including the value of the easements owned by the company in the streets of the city in determining the value of its property for rate making purposes.

For the opinion of Attorney General Robinson I have the highest respect, and it is with great reluctance that I feel compelled, in adhering to the conclusion I had reached, to take a position which is at variance with his views upon this question.

The subject of easements presents one of the most important issues for determination in this case. The significance of this element is evidenced by the claim of The United Railways and Electric Company for approximately $18,000,000, and by the fact that a value of $7,000,000 is allowed therefor in the decision of the majority of the Commission. The capitalization of easements as a part of the fair value of its property used in the public service is urged by United Railway in reliance upon Wilcox vs. Consolidated Gas Company, 212 U. S. 19, and the Maryland tax cases, Consolidated Gas Company vs. Mayor and City Council of Baltimore, 101 Md. 541 and 105 Md. 43; and United Railways and Electric Company vs. Mayor and City Council of Baltimore, 111 Md. 264.

In Wilcox vs. Consolidated Gas, the United States Supreme Court allowed a value of $7,781,000 for *franchises,* but on grounds which cannot be said to exist in the case at issue. In 1884, under a law of that year, the several gas companies operating in different sections of New York City combined to form the Consolidated Gas Company of New York. The statute authorizing the combination pro-

vided that the capitalization of the consolidated company should not exceed the "fair aggregate value of the property, franchises and rights of the several companies to be consolidated." The valuation on which the consolidation was effected included an element of $7,781,000 for the franchises of the companies united. This valuation was sanctioned by law, followed by the organizers in the capitalization of the consolidated corporation and stood as a factor on which the stock was dealt in for more than twenty years.

The Circuit Court of the United States for the Southern District of New York allowed a value of $12,000,000 for the franchises. This was determined by increasing the franchises in the same proportion in which the tangible property had grown. The Supreme Court objected to a revaluation of the franchises as opposed to the principles of valuation for rate purposes, but allowed the sum of $7,781,000 fixed and agreed upon under the Act of 1884. To guard against the misuse of this allowance as precedent the court explained its position as follows:

> "What has been said herein regarding the value of the franchises in this case has been necessarily founded upon its own peculiar facts, and the decision thereon can form no precedent in regard to the valuation of franchises generally, where the facts are not similar to those in the case before us. We simply accept the sum named as the value under the circumstances stated."

In no sense were the franchises valued in the accepted meaning of the term for rate purposes. The language of the court manifests its disapproval of any effort in this direction. The franchises were included at what is to be construed to be their *investment cost* and not at any form of appraised value. Although it is this point which sharply differentiates the Wilcox case from that of United Railways, the latter endeavors to establish as fact that the franchises were obtained under conditions which makes its case tronger than that relief upon as authority.

It is clear that the court in Wilcox vs. Consolidated Gas did not reply upon the assessed value of franchises for tax purposes as a measure of their value for rate determination. The Court specifically said:

> "The fact that the state has taxed the company upon its franchises at a greater value than is awarded there here is not material. Those taxes, even if founded upon an erroneous valuation, were properly treated by the company as part of its operating expenses, to be paid out of its earnings before the net amount could be arrived at applicable to dividends, * * *"

In the contention that the case of United Railways is stronger than that of the New York utility, two reasons are cited by Railways.

> "In the first place, it is undisputed that the *franchises* were not pure gratuities. In order to secure them the Baltimore City Passenger Railway Company agreed to buy out the previously existing omnibus lines, agreed to furnish an iron tramway for other vehicular traffic, agreed to maintain the paving which would be worn out not only by its own service, but by the other vehicular traffic attracted to the iron tramway, and finally agreed to make the City a preferred participant in the gross receipts to the extent of 20 per cent." (Italics mine.) (Pages 102 and 103 of Railways' Brief.)

Such forms of consideration cannot be accepted as indicative of the rate determining value of easements, neither can they be construed as considerations for the easements. It is clear that whatever the Baltimore City Passenger Railway Company may have agreed to do, any such agreement was for the purpose of obtaining the franchises as such.

The second reason advanced is that "while the New York franchises were regarded as intangible personal property, the thing which we are discussing in Maryland is an interest in real estate * * *" In urging a difference between franchises and easements, and recognizing that the promises were made in order to secure the former, the Railways Company cannot convert the franchises into easements or the consideration for the franchises into consideration for the easements. It is not said, neither can it be implied, that a certain agreement was made in order to secure franchises *and* easements. If it be argued that the easements flow from the fran-

chises, then, as the stream can rise no higher than its source, and, as franchises were taken into the rate base at no more than cost, the same rule applies to the easements.

The third point, by reason of which Railways claims a stronger case than that found in Wilcox vs. Consolidated Gas, is that "the highest legislative authority in the State, the General Assembly of Maryland, expressly confirmed the grant of these franchises to the Baltimore City Passenger Railway and provided that they should remain in the hands of the Railways in perpetuity unless they were taken from the Railways by municipal acquisition, in which case the municipality should pay a fair value therefor." Again, the element discussed is franchises and not easements. The argument advanced relates exclusively to franchises, and courts and commissions have declared repeatedly that even though franchises here value for various other purposes they are not to be valued as a part of the rate base.

The fourth point of Railways is expressed as follows:

> "There was not at the time of the consolidation a direct announcement of the value at which the easements were taken over. There was no doubt, however, in the minds of the general community or of anyone who now studies the situation that the easements were one of the chief elements in determining the price to be paid for The Baltimore City Passenger and The Baltimore Consolidated properties." (Page 104 of Railways' Brief.)

The first sentence of this quotation is in conflict with Railways' arguments in support of a value for easements. As no reference was made to easements, it cannot be assumed that they were considered as a separate element. If a value had been attached to the easements, apart from the franchises, it is more reasonable to assume that such a drastic departure from the generally accepted principles of valuation for exchange purposes would have been specifically announced. The principle of a separate value for easements arose in the tax cases several years after the railway properties were consolidated, and it is difficult to see how there could have been in the minds of the

general community any thought that the easements were one of the chief elements in determining the price to be paid. If any intangible element was considered it doubtless was the franchise and not the interest in real estate in the form of easements.

The United Railways endeavors to place the official sanction of the State upon the terms of the purchase.

> "There remains still to be considered the fact that the State has given official recogntion to the terms of this purchase. In 1910, in the very act creating this Commission, it provided that so far as possible in fixing a value of a utility property the Commission should protect the value of bond already issued." (Page 104 of Railways' Brief.)

The Consolidation was in 1899; the act creating the Commission was passed in 1910 without specific reference to United Railways. The desire to protect security holders has no relation whatever to State approval of the terms of the consolidation. The provision of the Public Service Commission Law that "as far as possible" the Commission shall not disturb the value of the bonds of a corporation issued prior to the passage of the Act, can only be interpreted to mean within the bounds of reason and equity to all interested parties, of which the car riding public is one. There was no mandamus ordering the Commission to find a value for rate making that would fully support all outstanding securities. Assuming that the $32,000,000 in mortgage and income bonds referred to on page 104 of Railways' Brief were issued for real values, they were issued in conformity with the income capacity of the business and the exigencies at the time of issue. There is no evidence that the easements were a dominant consideration or any consideration at all. Even though they were, there was never official sanction of the amount at which they were capitalized and the Commission would not be bound by such action.

In presenting the equitable side of the proposition for the inclusion of easements, it is contended that the public granted the easements with the full expectation that they would be capitalized. Nevertheless, it is admitted that if a new company were organized today and given ease-

ments without charge, the grant would provide that the easements could not be capitalized for rate purposes. (See page 105 of Railways' Brief.) The public mind as constituted forty years ago was hardly different from that of today on the question of expecting a private corporation to capitalize, against public interest, the gratuities of the public. Neither may it be said that the gifts were made with the expectation that they would be capitalized at the expense of posterity. If the public mind of today is any evidence of what it was a generation ago, it is difficult to conceive that there could have been any such expectation as that submitted for the Commission's consideration.

Coming, now, to the reliance of Railways upon the tax cases as authority for capitalizing easements, the distinction made by the Maryland Court of Appeals between franchises and easements is clear and definite. Consolidated Gas Company vs. Mayor and City Council of Baltimore, 101 Md. 541 and 105 Md. 43; and United Railways and Electric Company vs. Mayor and City Council of Baltimore, 111 Md. 264. It must be recognized that the franchise is personal property and that the easement is an interest in land. These are two separate forms of property rights and are to be considered as such.

> "*The right* to occupy the streets with gas mains is a *franchise*—the actual *occupation* of them in that way pursuant to the franchise is the acquisition of an *easement*. * * *"

> "* * * * The naked, unused, slumbering franchise is property, but it is property concerning the assessment of which *in that condition* for purposes of taxation the statutes do not make provision, otherwise than by including it as an element which enhances the value of the shares of the capital stock. But when the franchise is brought into activity and is availed of to accomplish the ends it was designed to effect, the property acquired under it becomes amenable to the tax laws apart from the tax on the stock and its value, as an easement, if an easement it be, may be largely augmented by the use to which the franchise enables that property or easement to be put." 101 Md. 546, 547, supra.

But the fact that franchises and easements are two forms of property interests does not necessarily place one under certain rules of valuation for rate determining purposes and the other under entirely different principles. Even though they are different according to our concepts of property, they are nevertheless so alike and so closely and inseparably related that in a valuation proceeding, such as is before us, the two cannot be divorced and made subject to contradictory methods and principles.

The franchise of a street railway company confers privileges and is granted with the expectation that these privileges will be exercised to occupy the public streets and render a transportation service. The franchise would be worthless if it failed to carry this right and would soon expire. Antecedent to the easement is the franchise grant without which the power would be nonexistent. Courts and commissions, generally, recognize the indestructible relationship between these two stages. In the case of People vs. Tax Commissioners, 174 N. Y. 441, quoted with approval in the Maryland tax case, 101 Md. 541, the New York Court of Appeals declared that "the value of either (franchise or easement) resides in the union of both and can be practically ascertained only by treating them as a unit. And in The United Railways and Electric Company of Baltimore vs. Mayor and City Council of Baltimore, 111 Md. 268, the Maryland Court of Appeals said, in discussing taxation of easements, "In fact, so closely related are special franchises and easements, the one to the other, that until easements came recently within a few years past, to be recognized as a distince species of property subject to taxation, these terms were frequently used as synonymous." And speaking of the statute by which the Park Tax was imposed, the Court declared, "The extent of the enjoyment of the franchise furnishes a satisfactory basis for ascertaining the amount of the tax to be paid for the easement as well as for the franchise, and we are unable to say that in passing the Act of 1882, Chapter 229, the Legislature intended to distinguish between these two so closely connected kinds of intangible property." 111 Md. 270, Supra. In Louisville vs. Cumberland Telephone

and Telegraph Company, 224 U. S. 661, the Court, in referring to franchises granted the company, said, "Among those thus held was the right to use the streets in the city for the purpose necessary in conducting a telephone business. Such a street franchise has been called by various names—an incorporeal hereditament, an interest in land, an easement, a right of way,—but, howsoever designated, it is property."

In the decisions of courts and commissions in most jurisdictions, no distinction has been drawn between the franchise of the utility and the easement acquired through the franchise. So that in cases involving the ascertainment of fair value, where the state or municipality grants to the utility a franchise conferring the right to construct upon the streets and public highways tracks and poles or to install mains and conduits beneath the surface thereof, this franchise is looked upon and dealt with as including and embracing all the rights in such streets and highways which the utility afterwards acquires.

In the Maryland tax cases, there was before the Court of Appeals not a question of valuation of easements for all purposes but of valuation for the sole purpose of taxation. The Court was discriminating in its language and was careful to guard against a too broad application of its views. The Court expressly stated, "It is a question of taxation which is before us." 101 Md. 545. After thus carefully defining the general question, the Court, in further explanation of its position, continued, "the use to which a franchise permits an easement to be put, is an essential element to be considered in placing a valuation on that easement for purposes of taxation." The scrupulous care with which the Court accepted easements as a tax basis and recognized a value for that purpose alone, precludes a conclusion that the Court placed its sanction upon the valuation of easements for rate purposes. The Court was passing upon a specific point, taxation, and not upon value for rate-making.

The next significant step in the development of the opinion of the Maryland Court of Appeals was the declaration that, even in the realm of taxes, franchises

and easements are closely akin. At 101 Md. 547, there was quoted the Court of Appeals of New York in People vs. Tax Commissioners, 174 N. Y. 441, where it was said, "They (tangible chattels in the public highway), have no assessable value worthy of notice except through the actual and constant use made of them as incidental to the special franchises. The value of either resides in the union of both and can be practically ascertained only by treating them as a unit. * * * We regard the tangible property as an inseparable part of the special franchise mentioned in the statute, constituting with them a new entity, which as a going concern can neither be assessed nor sold to advantage except as one thing, single and entire." In explaining the application of this statement, the Maryland Court continued, "We cite this to show, if precedent be needed to support such a self-evident proposition, that the use to which a franchise permits an easement to be put, is an essential element to be considered in placing a valuation on that easement for purposes of taxation."

In United Railways Company vs. Baltimore City, 111 Md. 264, the language of the Court of Appeals is clearer and more emphatic. One paragraph from that decision serves further to make clear the position of United Railways at that time.

> "The Railways Company has brought this appeal, conceding, as we have said, that under the decisions of this Court, such property is subject to taxation, but claiming that in this case the tax on gross receipts, above mentioned, known as the Park Tax (because the proceeds are required to be applied to the maintenance of the public parks of the city), is itself a complete and adequate tax on the easements enjoyed by the Railway Company in the highways of Baltimore, and that these easements are thereby exonerated from any further taxation under the existing laws of the State." (Page 267 of Court Opinion.)

But how, it may be asked, does the Park Tax relate franchises and easements? Several statements serve to establish this point.

"We, of course affirm what was said in those cases, to the effect that the Park Tax was a franchise tax exacted in exchange for the privilege accorded the street railway companies to lay their rails and run their cars upon city streets. But the language of these cases must be considered with reference to the questions then before the Court. In none of them was any question concerning the separate taxation of easements as distinguished from franchises presented." (Page 268 of Court Opinion.)

The last sentence may appear to break down the relationship, but in reading further it is seen that the Court meant to show that the Park Tax, accepted as a franchise tax, exonerated the company from an easement tax because of its equivalency to the former.

"We do not think therefore that the three *Park Tax Cases* can fairly be said to deny the contention that the nine per cent. tax on gross receipts did include as an element thereof a tax upon the easements enjoyed by the appellant in the highways of Baltimore City." (Page 268 of Court Opinion).

"But leaving out of consideration the additional burdens and charges above mentioned, and having regard to the tax on the gross receipts imposed by the Act of 1882, Chapter 279, alone, when we reflect that such tax reaches every nook and corner of value in the easements, as well as in the franchises of the corporation; that the amount of the tax is equivalent to a direct property tax on an assessment of over $2,000,000; that there could scarcely have been a thought in the legislative mind at that time (1882) of taxing the easement separately as property distinguished from the franchise, and that in fact no effort was made to tax easements for a period of twenty-five years thereafter, we think the inference is irresistible that the Legislature did not then contemplate a tax on the easements enjoyed by the street car companies now composing the appellant, in addition to the gross receipts tax which by that Act it imposed upon them. A tax on gross receipts necessarily involves the idea of the user of the fran-

chise, for without such user no receipts would be earned." (Page 269 of Court Opinion.)

And finally comes the most convincing statement of all, previously quoted as evidence that the Court of Appeals recognized a close relationship between franchises and easements for tax purposes.

> "The extent of the enjoyment of the franchise furnishes a satisfactory basis for ascertaining the amount of the tax to be paid for the easement, as well as for the franchise, and we are unable to say that in passing the Act of 1882, Chapter 279, the Legislature intended to distinguish between these two so closely connected kinds of intangible property." (Page 270 of Court Opinion.)

In view of the association of franchises and easements, established by the Court of Appeals, the identity of the two for rate determining purposes is even more obvious and essential in law and equity. When a franchise is given by the public to a street railway company, it is with the full expectation and intention that the company will lay its tracks and operate its cars upon the streets. The franchise is the contribution which the public makes to the business of the utility. It is given in order that it may be used and exercised for the public benefit. New York Electric Lines Company vs. Empire City Subway Company, 235 U. S. 194. The public not only grants the right, the privilege to use, but the easement resulting from the use, the thing which it was intended that the company should acquire, likewise issues from the public. Furthermore, when a street railway company engages in the business of public transportation as a common carrier, it is performing an undertaking in the nature of a governmental function. To conduct the business for which the company is formed, it is indispensable that there be acquired the right to lay tracks and run cars on the streets. The public confers this right in order that the company can put to their intended use the transportation facilities. Thus, the easement must inevitably follow the franchise and become an integral part of the broad rights of the utility, by whatever name they may be known, if the utility is to fulfill the role for which it was brought into being.

"When the public grants to the carrier the right to maintain its tracks along a public street it in essence assists the carrier to that extent in the discharge of its public duty. Certainly the public ought not to be taxed by reason of and in proportion to the assistance extended." Opinion of Interstate Commerce Commission in valuation of Texas Midland Railroad, Valuation Docket No. 2.

From the standpoint of exchange value, the franchise and easements may be, and almost invariably are, combined. In fact, no effort is usually made to differentiate between the two. Their exchange value is based upon the capitalized earnings which the exercise of the rights yield. It is only when the physical property is operated that a value attaches to the intangibles. It is the use to which the franchise and easement are put that gives them value. That is the necessary, the essential condition. The mere franchise right to use a street may, when unused, have little if any value; but, when the right is exercised to occupy the streets, it may become a thing of considerable value. The value of the right when unused is potential; when in use it is real. Thus, as has been explained before, the larger value is but the product of a higher stage in the development and exercise of certain fundamental rights.

Because of the indisputable fact that "the value of either (franchises or easements) resides in the union of both," it becomes impossible to dissociate them and measure them separately in determining the fair value of a public utility for rate purposes. If franchises or easements were *valued* for rate purposes, there would be only one possible method, and that would be a capitalization of earnings. But it is at once evident that this is an impracticable method in passng upon utility rates or upon fair value as a criterion of the reasonableness of rates. The earnings which give value to franchises and easements are dependent entirely upon the rates charged. But the ultimate question before the Commission is the reasonableness of these rates, the rates and the earnings resulting therefrom cannot be used in arriving at value. To do so would invariably justify the rates charged and, in fact, would lead to higher rates because values would

be pyramided to a point at which the rates would be all the traffic could bear. As the extent of the earnings determines the worth of the franchises and easements, if the earnings are small, the franchises and easements have little value. When earnings increase, there is an appreciation in value. As the earnings are produced through rates paid by the public, if a value for franchise or easements were included in the rate base and a greater income claimed in order to produce a return on the added value, there would be necessitated an increase in rates. Since the increase in rates would bring higher earnings, this in turn would increase value still further. Thus, there results an absurdity. If there is an element to be valued, there must be a reasonable, equitable and practicable method. In Georgia Railway and Power Company vs. Railroad Commission of Georgia, 278 Fed. 242, P. U. R. 1922, C, 744, the United States District Court for the Northern District of Georgia, in passing upon the capitalization of franchises, expressed this view as follows:

> "The absurdity of so regarding it becomes further evident in attempting to value it in rate fixing; for it it has a value, as is usually stated, because it enables its possessor to earn larger returns than can be attributed to a fair return upon his physical and other intangible property, its value being the capitalization of this excess, a rate could never be reduced. To reduce it would be necessarily to decrease and impair the value of the franchise, because its earning power had been reduced. The owner of the public franchise, for which the grantee paid nothing, except what he invested in the business established under it, is not entitled to have the value of the franchise included in the estimate of his property taken for public use in fixing the reasonable rate to be charged under the franchise. If the franchise were purchased by a payment to the public other than in the investments in the business, such payment, of course, would be an additional investment to be regarded. Nor is the fact that the franchise is taxed as property material. Neither the fact nor the amount of taxation is of any consequence to the owner, because the tax paid is

allowed as an expense of business and passed on to the customer."

But, it is suggested by Railways that the easements should be taken into the rate base at their taxable value. It is plain from the many valuation cases that tax value is seldom acceptable as fair value in deciding upon the reasonableness of rates. The utilities would be the first to revolt against the general application of such a principle, and if the principle has merit it should be susceptible of a broader application than to easements alone. It might with equal force be applied to the tangible property.

By unquestionable judicial authority franchises are not *valued* for rate purposes. When included in the rate base, they are included at cost. In the case of Georgia Railway and Power Company vs. Railroad Commission, supra, the United States District Court for the Northern District of Georgia decided, and was later sustained by the United States Supreme Court, that in the valuation of the property of a gas company the value of the franchises of the company was properly excluded. The following extracts from the opinion in this case clearly set forth the position of the court:

"In estimating the value of the property whose use is taken, the Commission excluded from consideration the value of the franchises of the gas company, we think correctly. That the charter is a contract upon sufficient consideration, that the franchises granted under it are private property, vendible and taxable as such cannot be disputed that they may not be taken from the owners for public purposes, or used adversely to the owners for such purposes, without just compensation, will not be denied. But the fixing of a just and reasonable charge to be made by a public service corporation is neither the taking from it of these franchises, nor the use of them, in the sense of the Constitution. * * *"

"* * * Regulation is no more than a form of sovereign visitorial power. It does not deprive the owner of his franchise, nor take it or its use from him, but directs it to its proper and only legal use, to wit, the service of the public and the earning for

its owners of just and reasonable returns. While used in the public service, like the other property devoted thereto, the franchise is not, like the other property, taken from other service of the owner. It is the public's own contribution to the business, whatever its value therein, and not a thing that either party to the charter could justly think was to become a charge on the public in the fixing of reasonable rates. Otherwise, the more liberal and valuable the franchise granted by the public, the greater would be the burden of rates the public would have to bear."

The United States Supreme Court, in Georgia Railway and Power Company vs. Railroad Commission of Georgia, 262 U. S. 625, affirming the opinion of the District Court, said, in reference to the exclusion from the rate base of franchises and past losses from operation:

"Two objections to the valuation relate to the exclusion of items from the rate base, namely: the franchise to do business in Atlanta, said to be worth $1,000,000, and so-called losses from operation during recent years, alleged to aggregate $1,000,000. These items were properly excluded. The franchise in question is not a monopoly. It is merely a perpetual permit, granted by the legislature in 1856, to maintain gas mains in the streets, alleys and public places of Atlanta without the necessity of securing the consent of the municipality. That such franchises are to be excluded in fixing the rate base was settled by Cedar Rapids Gaslight Co. vs. Cedar Rapids, 223 U. S. 655, 669, 56 L. ed. 594, 604, 32 Sup. Ct. Rep. 389; Des Moines Gas Co. vs. Des Moines, 238 U. S. 153, 169, 59 L. ed. 1244, 1252, P. U. R. 1915 D, 577, 35 Sup. Ct. Rep. 811, and Galveston Electric Co. vs. Galveston, 258 U. S. 388, 66 L. ed. 678, 42 Sup. Ct. Rep. 351. The allowance for the franchise made in Willcox vs. Consolidated Gas Co., 212 U. S. 19, 43, 44, 48, was rested on special grounds which do not exist in this case."

See also the more recent case of Brooklyn Union Gas Co. vs. Prendergast, 7 F. (2d) 628.

Spurr, in his recent book on *Guiding Principles of Pub-*

lic Service Regulation, Vol. 1, p. 479, says: "After a considerable conflict of opinion as to the proper treatment of franchises in valuations of public service company property for rate making, the question must now be deemed to be settled; and the rule is that nothing is to be allowed for franchise value, in addition to the value of the physical property; but that whatever the company has paid for its franchise may be capitalized as a legitimate investment cost." Whitten, in his *Valuation of Public Service Corporations,* states this conclusion: "Practice in rate cases is practically unanimous against the inclusion of franchie value." (s. 699). See also Hartman on *Fair value,* p. 190; and Wyman on *Public Service Corporations,* Vol. 2, s. 1104.

Recent efforts have been made in other jurisdictions to have a value placed upon easements in rate inquiries, but all have failed. Commission have without reserve rejected such proposals as contrary to sound regulatory practice. In the case of Westinghouse Electric and Manufacturing Company vs. Denver Tramway Company, in the United States District Court for the District of Colorado, P. U. R. 1925B, 190, counsel for the receiver asked the master to value the street easements belonging to the tramway company and to make that value a part of the rate base. The Court said:

> "On the proof offered by the receiver, and there is none to the contrary, I find the value of those easements to be $2,000,000. But I agree with the master that their value cannot enter into the rate base."

And in the case of Potomac Electric Power Company vs. Public Utilities Commission of the District of Columbia, in the District of Columbia Supreme Court, P. U. R. 1920C, 345, the disapproval of the Court was more emphatic:

> "The Power Company further claimed that it had a right to include in the present fair value of its property the sum of $2,500,000 for what it designated as its easements in the public streets. Whether the privilege to use the public streets, which the Power Company possesses, should be called a franchise, a privilege or an easement, is of no consequence. The Power

Company claims that its actual occupation and use of the streets under this privilege gives it an easement therein, and gives to this easement a separate and distinct value which it has a right to capitalize as against the public. To claim that these so-called easements which cost the Power Company nothing, without which it could not perform its public duty, and which it is allowed to exercise to enable it to do so, can be capitalized against the consumer of its product in any sum whatsoever, is to make the public use destructive of the public right and effect a result which should not be tolerated by any judicial tribunal."

On appeal, the decree in this case was reversed by the United States Court of Appeals of the District of Columbia, but the reversal was based exclusively upon the failure of the Commission and the lower Court to consider reproduction cost as an element determining the fair value of the company's property. No reference was made to the exclusion of a value for the easements.

A claim for franchise value based upon the number of square feet of street space required for passage of cars over the public streets, and at a rate of value equivalent to that of the adjoining property fronting the street was rejected by the Oregon Commission in re Southern Pacific Company, P. S. C. Or. Order No. 1263, August 25th, 1925. The Commission said:

> "It is the Commission's conception that a franchise is a mutual agreement between the public and an agency undertaking public service, whereby the medium, by which service is rendered, is allowed, in common with other public uses, the right of use of the public streets. Such a contention that the public should presumably pay a return upon the right or gift extended by it, does not merit the serious consideration of a rate regulatory body."

Does the exclusion of a capitalized value for franchises and easement result in a confiscation of property? This is a question of paramount importance. Both franchises and easements are forms of property rights. By settled principle of law, franchises are not to be capitalized for

rate purposes. If the exclusion of one form of property right is not to be construed a confiscation, it must follow that the exclusion of a dependent right in a higher stage of development does not constitute confiscation. This is the accepted view in those jurisdictions, and they are many, in which franchises and easements are placed under the same rules of valuation procedure. If there were allowed a capitalization of easements at more than cost, the purpose of excluding franchises would be defeated.

Neither can it be contended that because the company is taxed on its easements they should be taken into the rate base. The exclusion of easements imposes no burden upon Railways. When the public chooses to levy a tax upon the carrier for the use of the streets, that tax must be borne by the car rider as a part of the operating expenses. This is the method used by Railways, and allowed by the Commission, in recovering the tax outlay. But the car riders, constituting a large section of the public, should not be called upon to carry the double burden of taxes and fair return on the assistance which it gives to the utility in exercising its function to serve. Obviously, this would be inequitable. A few figures will show the monetary signifiicance of this burden. The company claims a value of nearly $18,000,000 for its easements. If there were accepted the contention of the company that it is entitled to a return of eight per cent on the fair value of its property, and if the above value for easements were included in the rate base, the public, in addition to paying the park tax which, with the present volume of traffic, amounts to approximately $1,100,000 annually, would also pay a return of $1,440,000 on the easement value alone. At the rate of a six per cent. return, the latter amount would be $1,080,000. On the basis of the value of $7,000,000 allowed by the majority of the Commission in this case, the return which the public would pay would amount to $560,000 at the eight per cent rate, or $420,000 at the six per cent rate. A doubling of charges in this manner would be a violation of principles underlying the public regulation of rates and would be without its parallel in any phase of regulation.

In further support of the view that the taxability of easements does not necesitate their inclusion in fair value, there must be cited the case of franchises or, to use a more

extreme illutration, earnings. Both of these are taxed, yet neither is capitalized as a part of the rate base.

There remains to be considered a question of law which must be emphasized. The provision of the Public Service Commission Law prohibiting the Commission from authorizing the capitalization of franchises or the right to own, *operate or enjoy franchises,* shows clearly that it was the intention of the Legislature that franchises and easements were not to be included as part of the fair value of public service company properties. Section 27 of the Public Service Commission Law (codified as Section 381 of Article 23 of Bagby's Annotated Code of the Public General Laws of Maryland), which confers jurisdiction upon the Commission with respect to the issuance of securities by corporations subject to the provisions of the Act, including street railway corporations, provides that such corporations may issue securities for various specified purpose, provided there shall have been secured from the Commission an order authorizing such issue. One of the purposes so specified is described as follows:

> "or when necessary or desirable, in the discretion of the Commission, to cause the aggregate capitalization to conform to the fair value of the property of such corporation as established by the Commission pursuant to the provisions of Sec. 30."

It may be noted that Section 30 (codified as Section 385 of Article 23 of Bagby's Annotated Code of the Public General Laws of Maryland) deals with valuation and authorizes the Commission to determine the fair value of public service corporations.

Section 27 continues:

> "* * * provided, however, that the commission shall have no power to authorize the capitalization of any franchise to be a corporation or to authorize the capitalization of any franchise or right to own, operate or enjoy any franchise whatsoever in excess of the amount (exclusive of any tax, or annual charge) actually paid to the State or to a political sub-division thereof as a conideration for the grant of such franchise or right."

There is nothing in the language of Section 27 which makes a distinction between the mere right and the exercise and enjoyment of that right. On the contrary, it is evident that the Legislature comprehended in its restrictions both franchises and easements. The wording that the Commission shall have no power "to authorize the capitalization of *any franchise or the right to own, operate or enjoy any franchise whatoever,*" (italics mine) must be construed to reflect the legislative contemplation of the distinction made in the tax cases between franchises and easements. In possible anticipation of a play of terminology to draw a line in utility regulation between franchises and easements, the language of the Act was made broad enough to include the latter by whatever term may be known. This is demonstrated further by the parenthetical expression, "exclusive of any tax or annual charge." Why was there reference to a tax or annual charge? At the time the law was enacted, the park and easement taxes were in existence and the distinction had already been made between franchises and easements. The Legislature manifestly aimed to prevent a capitalization of these taxes or the sum upon which they were based "in excess of the amount actually paid to the State or to a political subdivision thereof."

If franchises and easements cannot be capitalized for the purpose of issuing securities, they cannot be in a fair value determination. Suppose, for illustration, if in ascertaining and establishing the fair value of one of such corporations pursuant to Section 30, the Commission should include therein the value of the easements of such Corporation, how could this be reconciled with the provisions of Section 27? Under Section 27 the corporation may issue securities when necessary or desirable, in the discretion of the Commission, to cause the aggregate capitalization to conform to the fair value so established, provided the Commission shall authorize it to do so. But it is expressly declared that the Commission shall have no power to authorize the capitalization of any franchise or right to own, operate or enjoy any franchise whatsoever in excess of the amount actually paid therefor.

After a careful review of the nature of franchises and easements, one is led, by the force of logic, equity and

law, to conclude that the capitalization of easements would be but a method of circumventing the prohibition placed upon the valuation of franchises. It is readily seen that if this were allowed, there would result a gross injustice to the public in general and the car rider in particular. To allow the company to include in its rate base any value by reason of its use of the streets would result in capitalizing against the public the exercise of rights and privileges granted the company and for which the public received no compensation. In the field of regulation, no rule or principle of valuation can equitably be invoked to justify such procedure. As was stated in the opinion of the New York Commission of the Second District, in Fuhrman vs. Buffalo General Electric Company, 3 P. S. C. R., 2d Dist. N. Y. 739:

> "If the franchise, which was a gift from the public to the company, should be made the basis of a money return, the practical result would be that the public would have to pay money to the company because it had given the company the right to occupy the public streets with its plant."

In the ascertainment of fair value, the franchises and easements should not be included as a part of the property upon which a return is allowed, except where it is shown that the utility paid for the franchises or easements, in which event they should be included at investment cost.

Although no allowance should be made for easements, there should be an allowance for the private rights of way occupied by United Railways. In presenting its case, however, the company elected to rely upon its broad claim for easements and did not submit complete evidence from which any definite value can be placed upon all the private rights of way. For this reason, upon the record now before us in the case and in the absence of further information, no specific value can be named for the private rights of way within the city limits.

ORDER NO. 10072.

Before the Public Service Commission of Marylana.

In the Matter of the Valuation of the Properties and the Investigation of the Capitalization and Affairs of The United Railways and Electric Company of Baltimore on the motion of the Commision Under Authority Conferred by Section 30 of the Public Service Commission Law.

CASE NO. 533.

The above entitled case having been duly heard and submitted and full investigation of the matters and things involved having been had and the Commission, on the date hereof, having rendered and filed an opinion containing its findings of fact and conclusions therein, which said opinion is hereby referred to and made part hereof.

It is, therefore, this 9th day of March, in the year Nineteen Hundred and Twenty-six, by the Public Service Commission of Maryland,

Ordered: (1) That the fair value for rate-making purposes of the property of The United Railways and Electric Company of Baltimore on December 31st, 1923, was Seventy-seven Million Dollars ($77,000,000), and such valuation shall be and become final unless protest against the same shall be filed with the Commission within ten (10) days from the date of this order, as provided by Section 30 of the Public Service Commission Law.

(2) That from and after midnight of March 9th, 1926, and until midnight of April 30th, 1928, and for no longer, unless such period be extended for a further period as hereinafter provided, or this Order be earlier modified or abrogated by further order of the Commission, The United Railways and Electric Company of Baltimore shall be permitted to charge and collect for the transportation of persons over its several street railway lines,

in Baltimore City and vicinity, the rates and fares as established and provided by the Commission's Order No. 8240 entered in Case No. 1682 on May 26, 1924, and in effect on the date hereof.

(3) That this Order shall be effective from and after midnight of March 9th, 1926, and until midnight of April 30th, 1928, and for no longer, unless such period be extended for a further period, or this Order be earlier modified or abrogated by further order of the Commission, provided that if there shall be pending before the Commission on April 30, 1928, any proceedings concerning the rates of fare of The United Railways and Electric Company of Baltimore, this Order and the rates of fare herein provided shall continue in full force and effect for a further period of six months, unless in the meantime the Commission shall have concluded its investigation and hearing in the said pending proceeding and shall have made effective its findings and Order therein.

(4) That The United Railways and Electric Company of Baltimore shall furnish to this Commission accurate and complete statements under oath, and in convenient form, setting forth the number of revenue and transfer passenger carried, and the number of car miles operated, the cash receipts from operation and other sources, and the operating and other expenditures of the Company, all set forth in the manner prescribed by the rules of this Commission for accounting by street railway companies, so soon as may be reasonably practicable and convenient after the end of each calendar month during the period this Order remains effective, and in no event later than the last day of the next succeeding calendar month, covering the operations of the company during the next preceding month.

(5) That the right of The United Railways and Electric Company of Baltimore to charge and collect the fares in this order prescribed shall be held subject at all times during the period covered by such order, or any extension thereof which may hereafter be granted as aforesaid to the right and power of this Commission to reopen this case in the light of the facts disclosed by the monthly reports aforesaid, or of other facts otherwise coming to the attention of this Commission and modify the rates of

fare by this order authorized to be charged and collected by the Company.

And It Is Further Ordered: That a copy of this order and a copy of the opinion hereinbefore referred to and filed herewith be forthwith served upon the said The United Railways and Electric Company of Baltimore, and that the said Company, within ten days from the date of the service of such copy, advise this Commission in writing whether or not it will accept and abide by the same.

HAROLD E. WEST,
EZRA B. WHITMAN,
Commissioners.

(G)

CASE NO. 533, OPINION FILED FEBRUARY 1, 1928, AND ORDER NO. 12630.

PUBLIC SERVICE COMMISSION OF MARYLAND

OPINION

Before the Public Service Commission of Maryland

Case No. 533

In the matter of the valuation of the properties and the investigation of the capitalization and affairs of the United Railways and Electric Company of Baltimore, on the Motion of the Commission, under authority conferred by Section 30 of the Public Service Commission Law.

Appearances:

Thomas J. Tingley, People's Counsel.

Edwin G. Baetjer and Joseph C. France, for the United Railways and Electric Company of Baltimore.

West, Chairman. Filed February 1st, 1928.

This case results from the decision of the Court of Appeals in remanding for further proceedings the action of this Commission in finding a value of the easements of The United Railways and Electric Company of Baltimore, hereinafter referred to as the "Company."

By its Order No. 8240, entered on May 26th, 1924, the Commission directed that the proceedings to establish the value of the property of the Company, which had

been instituted by Order No. 1024, on December 30th, 1912, but which had been allowed to lie dormant, be prosecuted to a conclusion. This investigation was completed and an opinion and order filed March 9th, 1926, finding the fair value of the Company's property as of December 31st, 1923, to be $77,000,000, which sum included $7,000,000 as the value of the Company's easements. For this element of its property the Company claimed a value of $18,184,954. The then People's Counsel, Clarence W. Miles, offered no testimony as to the value of the Company's easements. He contended that no value whatever ought to be allowed for them. The majority of the Commission, however, acting on the advice of Honorable Thomas H. Robinson, Attorney General, then legal adviser to the Commission, to the effect that he did not see how the Commission could avoid allowing a value for easements, and in view of the decisions of the Court of Appeals that the easements were actually an interest in land, felt compelled to allow a value for the Company's interest in the land occupied by its tracks. Commissioner Harper dissented as to the finding on easements, filing an opinion in which he held that no value whatever should be allowed for easements in the rate base.

The Company submitted three methods of finding the value of these easements which are explained in the Commission's opinion in the valuation case. The Commission declined to accept any of them believing that none was proper, and that the value claimed as a result of the application of any one of them was excessive. It was therefore compelled to find a plan which it felt would alike be fair to the public and the Company.

It found that certain easements in Baltimore City were assessed for taxation purposes. These were in the new and old annexes, and they were assessed for taxation purposes because they were not subject to the park tax of 9 per cent. on the gross receipts of the Company which the City imposes. In the new annex the figure was $12,500 per mile. In the old annex it was $17,692 a mile. The Commission felt that these tax assessment figures represented the lowest value these easements possessed as an interest in land, without any consideration what-

ever of earning power. The figure per mile for the old annex was about 40 per cent. higher than that for the new annex. The Commission therefore applied an increase of approximately 40 per cent. to the assessed value of the old annex easements, reaching a figure of $25,000 a mile which it fixed as the fair value of the easements within the boundaries of the City as they existed prior to the annexation of 1888.

People's Counsel, adhering to his position that no allowance whatever ought to be made for easement value, appealed to the courts. He raised no particular objection to the *amount* allowed nor to the *method* by which the amount was reached, contending that the *principle of allowing any amount whatever* was wrong. The case went first to the Circuit Court of Baltimore City which sustained the Commission. In the case before the Court it was argued that in finding a value for easements, the Commission was giving a value to an element of property the value of which was dependent upon its earning power.

Judge Frank, in discussing this point, said in effect that to allow a value created even in part by the earning capacity of the thing valued would be manifestly improper, for

> "The objection to valuing an easement in a rate base in terms of earnings is self-evident. The greater the value of the easement, the larger the fair return that must be allowed upon such value."

He also said, however, that:

> "The valuation of $7,000,000 made by the Commission which is now the subject of attack was reached without reference to the earning capacity of the easements so valued."

Mr. Miles appealed to the Court of Appeals, which, in an opinion in the case of Miles v. Public Service Commission of Maryland, et al. (151 Md. 337) sustained the *principle* of allowing a value for easements but held that in using assessment values for fixing the value of the Company's easements the Commission actually had used values which contained the element of earning power. The Court cited in support of this position the fact that

the case of the Consolidated Gas Company v. Baltimore City (101 Md. 541) definitely settles the fact that earning power is considered in establishing assessment values of easements.

It therefore remanded the case "without affirmance or reversal of the decree, for further proceedings in accordance with the opinion of this Court."

By agreement of counsel, the Court below sent the case back to the Commission for rehearing.

When it fixed the value of the Company's easements at $7,000,000, the Commission, of course, was fully aware of the impropriety of including even the smallest part of an element of earning power in the value of an easement, or of any other piece of utility property, for rate making purposes. It did not think it had done so, and if it did do so, this was by inadvertence. It was also, of course, familiar with the Consolidated Gas Company case (101 Md. 541) and with the fact that the Court of Appeals in that case had decided that the element of earning power should be taken into consideration in fixing the value of that Company's property for taxation purposes. It was aware also of the fact that a great deal of difficulty was experienced by the Appeals Tax Court of Baltimore City in fixing the assessed value of the Railway Company's easements; that the Railway's case had gone to the Court of Appeals; that the Court of Appeals had held that the park tax of 9 per cent. of the Company's gross receipts was in part a tax on the easements subject to the park tax, and of the further fact that the value established for taxation purposes of such easements as are not subject to the park tax was the result of a compromise. The Commission was not aware that in that compromise figure the element of earning power was included.

Also, in fixing a value for county easements, abutting land values were used as a base, and that figure, the Commission feels, is not involved in the Court of Appeals' decision. For the easements in the new annex, the Commission had before it uncontradicted testimony of real estate experts, which gave a higher value of new annex easements based on adjacent land values than the

value fixed for taxation purposes. Believing it would be justified in accepting the lower figure, it did so.

However, the Court having decided that its method in using tax assessment figures was improper, the Commission has proceeded by another method to establish a value for the Company's easements in the new annex as well as in the old annex and the old city, which it feels will meet with the Court's requirements. This method was developed at the rehearing which was held by the Commission and the whole case fully argued by counsel and briefs submitted.

Before discussing the method followed at the rehearing, however, the Commisson is compelled, in candor, to admit an error, other than that indicated by the Court, which it made in fixing the value of $7,000,000 for the Company's easements. This was pointed out by Thomas J. Tingley, People's Counsel, in the re-hearing of the easement case. Its correction would result in a reduction in the value found by the Commission even using the tax assessment base.

In discussing the Company's methods of arriving at the values it claimed for its easements in the original valuation case, the Commission, having in mind easements generally, but particularly those in the old city and old annex, said:

> "* * * the Company has only *an interest* in that part of the public highways occupied by its tracks, and not an outright ownership, and it can only use that part of the highways occupied by its tracks, in common with other vehicles operating over the highways."

Nevertheless, in arriving at its value for the easements in the public highways, it took the tax assessment figures on those parts of the Company's rights of way that were not covered by the park tax, these figures being the only ones available. These particular sections were private rights of way in which the public has no interest. They were acquired by purchase, by condemnation, or by gift or exclusive grant or by all these methods. The public has no rights in them, except perhaps to cross them. The

Commission, however, used the figures at which these *private* rights of way are assessed, as the basis for valuing *all* the rights of way and easements of the Company, those in which the Company has only an interest as well as those which it owns outright, without making a reduction in the value of those easements in which the public has at least a right equal to that of the Company.

In pointing this out in his brief, Mr. Tingley says:

> "* * * in the method of valuation thus employed, (by the Commission) it treated them, by inadvertence, as if they were exclusive rights of way acquired for value from private owners."

That is true.

In developing a plan for arriving at the value of the Company's easements for rate making purposes, which will meet the objections of the Court of Appeals to the former plan, People's Counsel and counsel for the Company have endeavored to determine what is the relative share or interest of the Company on the one hand, and the public on the other, in the land owned and used by them jointly. This plan has the approval of the Commission. The fact of the joint use of public easements was recognized and mentioned by the Commission in its earlier opinion. The working out of the plan, however, was beset by many difficulties and resulted in wide differences of opinion not only as to the application of the plan itself, but to the relative interests of the Company and the public in the city highways.

An effort was first made to determine the value of the property abutting upon the tracks of the Company; reducing all this property to lots of a depth of 150 feet; and applying this value of abutting property to the strip occupied by the railways in the bed of the street, in order to obtain the fee simple value of the easement strip. This done, the problem was then to determine the relative interests of the public and the Company in the strip. The Company claimed 50 per cent. and 75 per cent. as its interest, while the People's Counsel allowed 10 per cent. The Company claimed an easement width for single track of 10 feet over the entire system, while

People's Counsel allowed 9.1 feet in the old city and old annex and 12 feet in the new annex and the counties.

The only testimony as to the value of abutting property was that furnished by the Company. It was based on the assessment of 1914, and was originally made for the valuation proceedings under Order No. 1024, entered December 30, 1912. It covered the old city and the old annex and amounted to $134,751,854. This amount was accepted by People's Counsel, although he contended it was too close to the total land assessments in the old city and old annex to be correct. This phase of the situation was explained by counsel for the Company who said the values taken for land abutting on easements included street crossings, schools, churches, public squares and parks and any other exempt property which did not appear on the tax rolls. It did develop, however, that in many instances the same property is valued twice, as in the case where car tracks cross. However, it was the only figure submitted.

It was also agreed between counsel that in order to get 1924 values for property valued in 1914, it would be necessary to add 55 per cent. to 1914 assessments. This gives a value for the property abutting on the easements in the old city and old annex of $208,865,374.

The problem of finding the relative use by the public and by the Company of the easement strip was a complicated one, and almost entirely theoretical. There is no exact way of determining this. Also, the Company claims that "the right to use" is substantially of as great value as the actual use, which People's Counsel denies. The Commission feels that "the right to use" is of some value in addition to the actual use, but what that value is, is a matter of judgment entirely, as is the actual use. There is no accurate measure for determining either. Certainly it is not as great as "the right to use" which the owner of abutting property has, for he may use his property for any or many of perhaps a hundred lawful purposes while the Company may use its easements and private rights of way for the single purpose of operating cars thereon. Therefore, if objection be made that the Commission has in any way taken into

consideration "the use to which the property may be put," it has taken that single use as a measure for limiting, rather than increasing, the value of easements. However, the Commission has endeavored to value the easement strip simply as real estate.

There is no material difference between the People's Counsel and the Company as to the mileage of the easement strip. The total number of miles of easements as found by People's Counsel and accepted by the Company, is 366,653, divided as follows:

Old City	172.788 miles
Old Annex	66.678 miles
New Annex	88.649 miles
County	38.538 miles
Total	366.653 miles

Of these classifications, the valuation for the county stands as the Commission found it, undisturbed by the decision of the Court of Appeals, for the easement is exclusive, and the value found for it was not based upon tax assessment figures, but upon the appraised value of abutting real estate. The value of these 38,538 miles was found by the Commission to be $368,662. The correct amount should have been $368,038.

The value found by the Commission for the remaining 328.115 miles, consisting of the easements in the new and old annexes and in the old city, were based on tax assessment figures, and, under the decision of the Court, a value for them must be found on a different basis, notwithstanding the contention of the Company's Counsel that the value found for easements or rights of way in the new annex was lower than was shown by the uncontradicted testimony of the Company's real estate experts, who based their values for these easements on adjacent real estate values. As the Commission value *was* based on tax assessments, even though the Commission may have found a lower value than it otherwise might have found had it used adjacent land values, it must value them by another method.

The Company claims the value of its private rights of way and its public easements, on the basis of use, and

right to use, to be $10,321,290 on a 50 per cent. use factor for public easements or $14,613,568 on a 75 per cent. use factor. To these figures it adds $1,673,000 for pole and wire easements, making these values $11,994,290 and $16,286,568, respectively. The values are made up as follows:

	Common Easements 50 per cent. factor	Common Easements 75 per cent. factor
County—		
38.5 miles—value as found by Commission	$368,662	$368,662
New Annex—		
88.6 miles—former value found by Commission	1,131,512	1,131,512
Old Annex—		
12.2 miles—exclusive	236,558	236,558
54.5 miles—common	528,378	792,566
Old City—		
172.8 miles—common	8,056,180	12,084,270
Total	$10,321,290	$14,613,568
Pole and wire easement	1,673,000	1,673,000
	$11,994,290	$16,286,568

The Company contends that so far as the new annex easements are concerned, they consist of 70.6 miles of exclusive easements with an actual, 100 per cent. value, as of 1924, of $1,055,682, and 18 miles of common easements, with a value based on a 50 per cent. use factor of $134,577, or with a 75 per cent. use factor of $201,866, making the total value $1,192,259 or $1,257,548, according to whether the 50 per cent. or 75 per cent. use factor is employed for the common easements. As already stated, the Company contends that these values are based on abutting property values, ascertained by real estate brokers, and that the tax assessment figures were used to reduce the real estate value, rather than increase it, and the Commission's value, $1,131,512 for new annex easements, is not affected by the Court's de-

cision. Therefore, the Company adopts the Commission's figures of $1,131,512 as being the value of the new annex easements of all kinds.

For the old annex, the Company claims for its 12.2 miles of exclusive easements a value of $19,390 per mile or $236,558, and for its 54.5 miles of common easements $528,378 on a 50 per cent. use basis, or $792,566 on a 75 per cent. use basis, making the totals $764,936 or $1,029,124, according to the use basis adopted.

The value per mile of the exclusive easements in the old annex is found by the Company in this way: The Company's witness, Mr. Giffen testified (Record, p. 1797) that he had analysed the value of the property abutting on the Company's private rights of way in the old annex in 1914, and found that these rights of way amounted to 21.64 single track miles, and that the value of the property abutting thereon to the depth of 150 feet amounted to $3,247,926. The Company, assuming an easement width of 10 feet, divided the $3,247,926 by 15 to get the value of the easement strip. This amount was divided by the length of the strip, or 21.64 miles, and a value of $10,006 per mile on the 1914 basis was reached. The Company adopted $10,000 instead of $10,006 as the value per mile. As it had been agreed that the assessed value of 1924 was 55 per cent. greater than that of 1914, the figure $10,000 was increased by 55 per cent., which resulted in a figure of $15,500 per mile. Finally, on the contention that the 1924 assessed value of property represented only 80 per cent. of its actual value, the Company divided the amount by 80 per cent. and got a final value of $19,390 per mile, which it claimed to be the fee simple value per mile of all its easements in the old annex.

In order to get the value per mile of the easements in the old city, Mr. Giffen testified (Record, p. 1804) that he started with a study of the abutting property values on all the Company's easements in the old city and the old annex which he made in 1914, and which amounted to $134,751,854. The Company has 172,788 single track miles in the old city and 66,678 miles in the old annex, but instead of dividing by the sum of these, or 239,466,

the Company first took the figure which Mr. Giffen arrived at for easements in the old annex, $10,000 a mile, multiplied this by 15 to get the abutting property value per mile, and then by 66,678 and thereby got a value of $10,000,000, which it claimed represented the 1914 assessment value of property in the old annex which abuts upon the easements of the Company. This figure was subtracted from the $134,751,854, leaving $124,751,854 as the 1914 assessment value of the abutting property in the old city.

By dividing his $124,751,854 by 172.788 miles of single track in the old city, the Company obtained an abutting property value equal to $720,000 a mile and, dividing this by 15, it got a fee simple assessment value of the 10 foot easement strip equal to $48,125 per mile, on 1914 assessment figures. Increasing this by 55 per cent., it got a 1924 value of $74,594 a mile. Then, on the theory that the assessment value is only 80 per cent. of *actual* value, the Company divided this figure by 80 per cent. and got a figure of $93,242 a mile which it asserts is the *actual* fee simple value of the easements in the old city.

People's Counsel finds a value for the Company's easements of $2,113,000, and he arrives at his figure in this manner: For the 172.788 miles of easements in the old city he allows a fee simple value of $34,000 per mile which he gets by dividing the assessed value of the property in the old city and old annex (1914 basis) by the mileage of the tracks in the old city and old annex. Allowing an easement width of 10 feet this would give a 1914 fee simple value of $37,509 per mile. But he only allows a width of 9.1 feet, a reduction of 9 per cent., which gives him his value of $34,000. He allows a 10 per cent. use factor, which gives him $3,400 a mile as the value of the Company's rights in the streets of the old city, or a total of $585,000. He does not increase 1914 values to 1924 values by adding 55 per cent.

For the old annex and new annex, he separates the easements into three classes,—private rights of way, semi-private rights of way, and public easements. For private rights of way in the old annex he allows fee simple value, $12,000 a mile, which he gets by using the

basis of $10,000 a mile, adopted by the Company, but allowing an easement strip of 12 feet. He uses this $12,000 per single track mile throughout in determining old annex values. To the 54.527 miles of public easements in the old annex he applies the 10 per cent. use factor and gets a total of $65,000, or approximately $1,200 a mile.

What the Company calls "exclusive easements" he calls "semi-private rights of way." That they are not actually exclusive, he contends, is shown by the fact that they are crossed at intervals by public highways. For these "semi-public" easements he allows the fee simple (1914) value, $12,000, less the space taken up by crossings, for which space he allows a 10 per cent. use factor, or 1-10 of the fee simple value, and gets for the 11.443 miles a total value of $130,000.

For the new annex he allows 1924 real estate values of $15,000 per single track mile of easement, 12 feet wide. This gives him a total of $43,500 for the 2.896 miles of private rights of way. For the public easements, taking the 10 per cent. use factor, he gets a total of $27,000 for the 17.996 miles; and for the "semi-private rights of way," consisting of 67.757 miles, he gets a total of $960,000 by using the same method described in discussing "semi-private rights of way" in the old annex.

For the 38.538 miles of county easements, all of which he calls "semi-private" because they are crossed by public highways, he gets a total of $294,000, or $7,900 per mile. The Commission had in the earlier case allowed a total for these easements of $9,550 per mile, or $368,662. This valuation, accepted by the Commission, was made by brokers and experts on land values, and was based on adjacent land values. People's Counsel took this figure for the 38,538 miles, added to it the 40 miles of private rights of way in the county, covered by Commission's Account 502, for which the Commission had allowed $248,573, and which was not involved in the Court of Appeals' decision. He divided the total value by total miles ($617,235 by 78.5) and got the average value of county easements and Account 502 at $7,900 per mile. This figure multiplied by 38.5 miles gave $304,150, the difference between that figure and the $294,000 allowed

by People's Counsel being represented by the space taken out by public highway crossings. In the county he allows for five crossings to the mile, each 40 feet wide, while for the old and new annexes he allows eight of the same width per mile.

People's Counsel's Exhibit No. 3 shows these values, found by him, as follows:

Old City	
Public Easements—172.788 miles, 10% use factor, @ $34,000 per single track mile	$585,000
Old Annex	
Private Rights of Way—.708 miles @ $12.00 per single track mile	8,500
Semi Private Rights of Way—	
11.443 miles x $\left[1-9/10\left(\frac{8x40}{5280}\right)\right]$ @ $12,000 per single track mile	130,000
Public Easements—54,527 miles, 10% use factor, @ $12,000 per single track mile	65,000
New Annex	
Private Rights of Way—2.896 miles @ $15,000 per single track mile	43,500
Semi Private Rights of Way—	
67.757 miles x $\left[1-9/10\left(\frac{8x40}{5280}\right)\right]$ @ $15,000 per single track mile	960,000
Public Easements—17.996 miles, 10% use factor, @ $15,000 per single track mile	27,000
Counties	
Semi Public—38.538 miles x $\left[1-9/10\left(\frac{5x40}{5280}\right)\right]$ @ $7,900 per single track mile	294,000
	$2,113,000

It will be noted that People's Counsel makes no allowance for pole and feed wire easements for which the Company claims $1,673,000. This was explained by the witness, Mr. Gildea, who said that the easement space allowed between tracks on streets where double tracks exist, was sufficient to compensate for the space occupied by poles and wires along sidewalks.

This Commission cannot accept the values found or the method of arriving at those values, of either Company's counsel or the People's Counsel. It accepts the figure of $134,751,854 as representing the value of the property abutting upon the Company's easements in the old city and old annex in 1914. This figure, however, certainly contains some duplications of values, and it is the Commission's belief that these duplications occur at least in every instance where tracks on one street cross tracks on another. What these duplications amount to in dollars it is impossible to tell from the testimony or the data at hand. It accepts the figure solely because it has no other of equal or greater authority. It also accepts the theory that in order to bring the 1914 figure up to 1924, the date of valuation, it is necessary to add 55 per cent to the 1914 figures.

It is not willing, however, to concede that the 1924 value, arrived at by increasing the 1914 assessment figures by 55 per cent, represents only 80 per cent of 1924 actual value, and that it ought to be further increased in order to show actual values. The Commission understands that it is the policy of the city authorities to assess property at 100 per cent of its value and believes they do so. Even if they did not, there would be a wide enough factor of tolerance in the duplications of value which occur where one car track crosses another at street intersections to make up for any decrease from actual value in assessment figures.

Nor does the Commission feel that any separate allowance ought to be made for pole and wire easements. It made none in its previous valuation, feeling that the allowances made in the valuation figures of reproducible property under accounts 519 and 521 (Poles and Fixtures and Distribution System) of $1,195,363 and $3,549,645, respectively, were sufficiently large to include any

easement value that might exist. The Company justifies its claim for a value of $1,673,000 for its pole and wire easements in the old annex and old city, 239 miles at $7,000 a mile, "wholly on the valuation of the Gas and Electric Company's pole lines at $7,000 per mile." (Company's Brief, page 32). This amount was never allowed by this Commission. It is a compromise figure arrived at by the Appeals Tax Court and the Gas Company for taxation purposes, and a figure reached by such method comes too close to the prohibition laid down in the Court of Appeals' decision for this Commission to allow it. Furthermore, the Commission feels that in using a 10-foot easement strip per single track, it has made sufficient allowance for poles and wires as well as the track itself.

On the other hand, the Commission does not agree with some of the methods used by People's Counsel in valuing easements, or the results arrived at by those methods. It believes that 10 feet, the figure used by the Company, more properly represents the width of the easement strip throughout the system than does the figures of 9.1 feet for the old city and old annex and 12 feet for the new annex and counties, used by People's Counsel. Nor does it approve his method for arriving at the value of the easements in the old city and in the counties, which the Commission regards as mathematically unsound. Deducting highway crossings from private rights of way makes too small a difference in the total value to have any real effect in the valuation, but any allowance necessary to be made for this amount can be made in another way by the Commission without going into a series of intricate calculations.

In spite of the practical impossibility of developing an accurate figure by which the ratio of use by the Company and the public in the easement strip may be determined, the Commission adopts the use factor in establishing the value of the Company's interest in the land which it occupies with its tracks. The Commission fully recognizes that it is indefinite, and that there are wide differences of opinion as to the actual use made of the strip by the public and the company; also as to how far the Company's "right to use" can extend against actual use by the public. In determining the extent of the Company's interest, the Commission must rely largely upon

its own judgment, based on the *facts* that have been developed at the rehearing. The theories have not been particularly helpful.

It believes that an apportionment of a 25 per cent interest in the easement strip to the Company and a 75 per cent interest to the public is fair to both, and it therefore adopts 25 per cent of the fee simple value of the strip as the value of the Company's interest in the land occupied by its tracks where the rights of the Company are not exclusive, this fee simple value being determined by adjacent land values, assessment of 1914, brought up to January 1, 1924, values by increasing them 55 per cent.

The approximate values of all the easements of the Company, exclusive and non-exclusive, arrived at by the Commission as aforesaid, are as follows:

EASEMENTS.

Old City, 172.788 miles @ $48,125 per mile			$8,315,422
Old Annex, 66.678 miles @ $10,000 per mile		$666,780	
Less private rights of way	.708 miles		
Less semi-private rights of way	11.445 "		
	12.151 " @ $10,000 per mile	121,510	545,270
New Annex, 88.649 miles @ $9,647 per mile		$855,197	
Less private rights of way	2.896 miles		
Less semi-private rights of way	67.757 "		
	70.653 " @ $9,647 per mile	681,589	173,608
Total, 1914 values			$9,034,300

Increasing this figure 55%, the total value of the land included in the Easements, based upon 1924 value, is $14,003,165

Applying the use factor of 25% to the value of the land, the approximate value of the Easements is $3,500,791

Private and Semi Private Rights of Way in the Old Annex and New Annex (or Exclusive Easements):

Old Annex, 12.151 miles @ $10,000 per mile	$121,510	
New Annex, 70.653 " @ 9,647 " "	681,589	
Total, 1914 values	$803,099	

Increasing this figure 55%, the total value of the private and semi private rights of way in the old annex and new annex, based upon 1924 value, is 1,244,803

Semi Private Rights of Way (or Exclusive Easements) in the Counties:

38.538 miles @ $9,550 per mile (1924 value) 368,038

Total approximate value of Easements and private and semi private rights of way $5,113,632

After a careful consideration of all the factors which in its judgment go to determine or affect the value of the interest of The United Railways and Electric Company of Baltimore, in the land occupied by the tracks of its street railway system, the Commission finds the value of such interest to be $5,000,000. As hereinbefore stated, the Commission has previously found that the value of the property of the Company, exclusive of easements, was $70,000,000 as of December 31st, 1923. The Commission, therefore, finds that the total value of all property of the Company, including easements, to be $75,000,000 as of December 31st, 1923, and an order will be passed accordingly modifying its Order No. 10072 entered herein on March 9th, 1926.

Commissioner Harper concurs. Commissioner Purcell was not a member of the Commission at the time the case was heard and took no part in the deliberations or the decision of the Commission in this matter.

ORDER NO. 12630.

Before the Public Service Commission of Maryland.

In the Matter of the Valuation of the Properties and the Investigation of the Capitalization and Affairs of the United Railways and Electric Company of Baltimore, on the Motion of the Commission, Under Authority Conferred by Section 30 of the Public Service Commission Law.

CASE No. 533

In accordance with the opinion of the Commission filed herein on the date hereof, which said opinion is hereby referred to and made a part hereof.

IT IS, this 1st day of February, in the year Nineteen Hundred and Twenty-eight, by the Public Service Commission of Maryland,

ORDERED: That paragraph (1) of Order No. 10072 entered herein by the Commission on March 9th, 1926, be and it is hereby modified and amended to read as follows:

(1) That the fair value for rate-making purposes of the property of The United Railways and Electric Company of Baltimore on December 31st, 1923, was Seventy-five Million Dollars ($75,000,000), and such valuation shall be and become final unless protest against the same shall be filed with the Commission within ten (10) days from the date of this order, as provided by Section 30 of the Public Service Commission Law.

AND IT IS FURTHER ORDERED: That except as hereinbefore modified, Order No. 10072 entered herein by the Commission on March 9th, 1926, shall be and remain in full force and effect.

AND IT IS FURTHER ORDERED: That a copy of this order and a copy of the opinion hereinbefore referred to and filed herewith be forthwith served upon the said The United Railways and Electric Company of Baltimore, and that the said Company, within ten (10) days from the date of the service of such copy, advise this Commission in writing whether or not it will accept and abide by the same.

J. FRANK HARPER,

HAROLD E. WEST,

Commisioners.